PLEAS OF THE CROWN FOR THE HUNDRED OF SWINESHEAD AND THE TOWNSHIP OF BRISTOL

A.D. 1221.

PLEAS OF THE CROWN

FOR THE

HUNDRED OF SWINESHEAD

AND THE

TOWNSHIP OF BRISTOL

TAKEN AT BRISTOL BEFORE

SIMON ABBOT OF READING RANDOLF ABBOT OF EVESHAM MARTIN PATESHULL JOHN OF MONMOUTH RALPH HARENG AND ROBERT LEXINGTON JUSTICES ITINERANT

IN THE FIFTH YEAR OF THE REIGN OF

KING HENRY THE THIRD

A.D. 1221.

BY

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PREFACE.

THIS book is a small contribution to the history of Bristol, but I venture to hope that it possesses something more than of local interest. In the Introduction, my object has been to make the matter of the record intelligible, if not to all, at any rate to some who are not professional students, and have neither the time nor the opportunity for the perusal of withered parchments and ancient tomes. I have endeavoured to be accurate and have set down nought in malice, either of afore- or after-thought. What I have written in error, adjudge, I pray, '*infortunium*,' and, of your charity, add '*et ideo nichil*.'

My thanks are due to Professor F. W. Maitland for his great courtesy in allowing me to use his transcript It is hoped that my translation will not be considered as an impertinence.

April, 1902. E. J. W.

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INTRODUCTION.

THE record before us is a small one, and represents the pleas of the Crown and the amercements for the hundred of Swineshead and the township of Bristol, taken at Bristol before the Abbot of Reading and his fellows justices itinerant in the fifth year of the reign of King Henry the Third and the year of Grace 1221. To be precise, it is a part of the nineteenth, the whole of the twentieth, and a part of the twenty-third, membranes of Assize Roll, No. 271, preserved at the Record Office, but completed and more or less perfected by reference to a contemporary roll known as Assize Roll No. 272.[1]

Both of these rolls contain the Gloucestershire business of the eyre of 1221, but the first, although somewhat mutilated, is the better record. It not only contains several enrolled instruments and a note of the

[1] These rolls were until quite recently known as *Coram Rege Roll, Henry III.*, *No.* 13, and *Assize Roll* $\left.\begin{matrix} \text{M} \\ 2 \\ 14 \end{matrix}\right\}$ 1, respectively.

election of the coroners, which are nowhere to be found on the other, but is posted up to the end of the Gloucestershire session. It comprises the list of amercements, and, apparently, is the roll that was used in the drawing up of such list. Certain entries suggest that it was also utilized as the basis for assessing the amercements. Indeed, its completeness makes it almost safe to say that it is the roll which was to be kept in the Treasury; the one which would be appealed to in checking the accounts of the sheriff; the one to be turned to at any time by a litigant to establish a matter of record. It is made up Exchequer fashion—that is, the strips of parchment which compose it are bound together at the top. On the left hand side of each membrane there is a margin containing abbreviated words recording the result of the presentment or plea, and the amount of amercements, deodands, fines and such like.[1]

As the entries were evidently made while the court was sitting, we cannot expect to find them written in the best of Latin. Neither is the grammar perfect. The clerks had to translate into Latin presentments and verdicts made and delivered by countrymen and burgesses in English, spiced, no doubt, in cases of oral delivery, with a very decided local accent. The

[1] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd. xliv-l.

translation had to be done on the spot. There was no time to think out polished phrases. Consequently we come across notes erratic, elliptic, and involved, and bearing evident signs of hurry and interruption. To make matters worse, clerical errors are not absent. But if one is not too startled at the many sudden changes of nominative, and is prepared to read the record in jerks, and to allow common sense to rectify bad grammar, he will find little difficulty with the document.

The tale it tells is one of discord, lust, and violence. A dozen or so of homicides, some deaths by drowning, a couple of rapes, stories of flights of slayers and suspected persons, fines imposed on townships and pledges, deodands for deaths by misadventure, transgressions of Jews, and a very satisfactory piece of hanging, are the staple contents of the record. But vulgar crime and its concomitants are not the only things narrated. Faint whispers of municipal life are heard, angry neighbours voice their discontent, and matters affecting quays, markets, castles, buildings, constables, bailiffs, sheriffs, and coroners, discover themselves.

To realize the age of the document one need only remember that the first appearance of Bristol in written history is senior to it but one hundred and seventy

years;[1] that Domesday Book was compiled only one hundred and thirty-six years before;[2] that Saint Augustine's Monastery at Bristol can give it not more than eighty years;[3] that the extreme limit of legal memory carries us but thirty-two years further back;[4] that the earliest recorded plea precedes it only thirty years;[5] and that forty years were to pass before Bracton wrote his monumental legal treatise.[6] Six years prior to its date one had merely to be suspected of a crime by the representatives of his neighbourhood to be sent to the Ordeal, or God's judgment of fire or water.[7] But in 1215 the Fourth Lateran Council forbade the clergy to take part in the rite,[8] which in 1219 was formally abolished,[9] and as a legal process it died out.[10] Trial by jury then became a factor in criminal

[1] Hunt, *Bristol*, 10, 11; *The Annals of Roger de Hoveden (Bohn's Edition)*, i, 118; Harold and Leofwin, sons of Earl Godwine, escaped by ship from Bristol after being outlawed by the assembly held at London on September 29, 1051.

[2] Pearson, *The Early and Middle Ages of England*, i, 265.

[3] R. J. King, *Bristol Cathedral* in the *Transactions of the Bristol and Gloucestershire Archæological Society*, 1878-9, Part 1, 104. S. Augustine's is now the Cathedral Church.

[4] Blackstone, *Commentaries on the Laws of England*, 11th Ed., ii, 31. In law the memory of man is supposed to extend back to the coronation day of Richard the First, Sept. 3, 1189.

[5] Maitland, *Select Pleas of the Crown (Selden Society)*, Introd. viii, xxvi, xxviii.

[6] Campbell, *Lives of the Chief Justices*, i, 63; Bracton was promoted Chief Justice in 1265, and the work was finished about that year.

[7] *Select Pleas of the Crown (Selden Society)*, pl. 116, 122, 125. This species of trial appears to have been in frequent use so late as the 15th year of King John; *Abbreviatio Placitorum (Record Commission)*, 90*b*, Middlesex and Kent, Roll 20.

[8] *Concil. Lateran*, IV., c. 18.

[9] Rymer's *Fœdera* (London, 1704), i, 228.

[10] *Social England*, Ed. by Traill, i, 292.

procedure, and we have an opportunity of viewing it in its infancy.

The period covered by the roll is at least five years, and may be as many as seventeen years. This eyre was certainly the first held in Gloucestershire since Henry the Third had become King, for the writ stated that all pleas were to be brought before the justices that had not been pleaded, and which had arisen subsequent to the time the justices itinerant were last in those parts in the time of the lord King John.[1] And we know from Bracton that it was a perfect exception to an indictment or appeal to prove that the justices had visited the county since the crime was committed, and that on that eyre no presentment had been made of it.[2]

If we could discover the last time in John's reign that the justices in eyre were in Gloucestershire, we should know exactly the period covered by the roll. But we have no such knowledge, and indications of date have to be traced through the names on the record. Now three presentments relate to the time of Robert of Roppelay, who was Constable of Bristol from 1204 to 1208,[3] and these alone take us back to

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i. 476*b*.

[2] Bracton (Rolls Series), ii, 242, 432–434. The case of Henry Romband decided in 1225 is twice cited in support of this doctrine.

[3] No. 3, 13, 36.

from thirteen to seventeen years. Other presentments relate to the times of Gerard of Athée and Peter of Chanceaux, Constables of Bristol, from 1208 to 1212, and 1212 to 1215 respectively.[1] And within a year of the last date John's reign ended. It seems then that no eyre had been held in Gloucestershire for about seventeen years.

In 1218 writs were issued for a general eyre, but the counties of Gloucester, Worcester, Hereford, Stafford, Salop, Leicester, Warwick, and Surrey were specially excepted.[2] Unfortunately the Close Rolls do not give us the reason for this distinction. It certainly was not because of lack of crime. The extant Assize Rolls prove this. An explanation may, however, be found in the fact that John had, by the help of his foreign adventurers, always kept a tight hold on the western counties, and bad as they were, peradventure the others were worse.

As nearly all the serious crime of the country came before the justices in eyre,[3] it can easily be imagined that with such long intervals, the legal machinery, devised for the repression and punishment of crime, became extremely inefficient. Indeed, the

[1] No. 14, 19, 33, 35, 38.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 380*b*.

[3] Pollock and Maitland, *History of English Law*, 2nd Edit., ii, 644–5.

greater the crime the better chance had the criminal of escaping. The system provided by the Assizes of Clarendon and Northampton aimed at a speedy administration of criminal justice. But even the energy of Henry the Second was unable to secure the holding of eyres more than once in every two or three years, and after the death of that King the eyre evidently languished.[1] Public opinion was against it, and although the barons in 1215[2] demanded that John should send two justices through each county four times a year[3] to hold assizes of novel disseisin, mort d'ancestor, and darrein presentment,[4] they did not cry out for more eyres. And it is not difficult to suggest the reason. A commission to take assizes and a commission to hold a general eyre are absolutely different things. The assizes required by the barons were useful to protect their property and their rights.

[1] Pike, *History of Crime in England*, i, 452-3.

[2] *Articles of the Barons*, *Art.* 8; *Magna Charta*, *Art.* 18.

[3] By *Art.* 13 of the *Second Charter of Henry III.*, the number of visits each year was reduced from four to one.

[4] All these assizes were possessory actions. That of *novel disseisin* was the remedy for the recovery of lands or tenements of which the party had been disseised. The assize of *mort d'ancestor* lay when a man's father, mother, uncle, aunt, brother, or sister died seised of lands held in fee, and after their death a stranger abated. That of *darrein presentment* was the remedy of the claimant to possession of an advowson. It is not unimportant to note that when the justices in eyre were at Ilchester in the 27th year of Henry the Third, (1242-1243), the bailiffs of Bristol produced a charter of Henry the Second testifying that the writ of assize of mort d'ancestor did not run in Bristol; *Somerset Pleas (Somerset Record Society)*, pl. 525. It would be interesting to know what has become of this charter.

On the other hand, the eyre was the most powerful check the King possessed over the seignorial jurisdictions. The barons, therefore, were not hasty in asking for more eyres. Neither was such a demand likely to come from the people, because the eyre was used for fiscal as well as judicial purposes, and the exactions levied caused the populace to believe that the increasing of the Exchequer receipts was its primary, and the repression of crime its secondary object. The extortions of the judges were considered worse evils than the perpetration of crime. Crime is seldom the result of sin, it is more often the result of starvation. And bitterly had the people learned, that starvation was the natural consequence of impositions. Small wonder, then, popular dread of an eyre became so great that in 1233 the men of Cornwall ran away into the woods on hearing of the approach of the justices.[1] In season and out of season local authority pitted itself against centralized authority, and, with such success, that in the second half of the thirteenth century the visits of the travelling justices for the trial of criminals were limited to one in seven years.[2]

[1] *Annales Prioratus de Dunstaplia; Annales Monastici (Rolls Series)*, iii, 135.

[2] *Monachi Wigorniensis Annales, Anglia Sacra*, i, 425; it was resolved to resist the entry of itinerant justices into Warwickshire, because seven years had not passed since their last visit. Pollock and Maitland, *History of English Law*, 2nd Edit., i, 202, qu. *Close Roll Hen. III.*, No. 77, m. 9d.;. An eyre in Norfolk was postponed as seven years had not elapsed since the last eyre. Page, *Northumberland*

But because so long a period had elapsed since the holding of the last eyre, it must not be supposed that Bristol and the hundred of Swineshead had been without criminal justice. Gaol deliveries may have been held.[1] Unfortunately, they are difficult to trace, as the commissioners appointed to hold them were not in the habit of keeping records.[2] Nevertheless, there is evidence that one took place under Henry de Vere, but the only clue to its date is the fact that it was held during the time the ordeal by water was in use.[3] Such work was then considered of so easy a character that knights of the shire were frequently entrusted to perform it. Few men were kept in prison.[4] They either broke out or

Assize Rolls (Surtees Society), Introd. xiv; The King's justices had not visited Northumberland for ten years previous to 1256.

[1] Herefordshire, which, like Gloucestershire, was excepted from the general eyre of 1218, but included in that of 1221, had a gaol delivery in 1220; *Rotuli Litterarum Clausarum (Record Commission)*, i, 427*b*.

[2] Bracton's *Note Book*, cases 281, 367, 431, 512, 530, 564.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 374, 383.

[4] The prisons of this time were very different to the prisons of to-day. For example, the following entry occurs in the Rolls of the time of Henry the Third. *Gleanings from the Public Records*, by Mr. H. Hewlett, in the *Antiquary*, March, 1882, (Vol. v, p. 99); "Assizes held at Ludinglond. The jury present that William le Sauvage took two men, aliens, and one woman, and imprisoned them at Thorlestan, and detained them in prison until one of them died in prison, and the other lost one foot, and the woman lost either foot by putrefaction. Afterwards he took them to the Court of the lord the King at Ludinglond to try them by the same Court. And when the Court saw them, it was loth to try them, because they were not attached for any robbery or misdeed for which they could suffer judgment. And so they were permitted to depart." After reading this terrible entry one almost wonders whether Bracton was serious when he wrote, "the gaol is appointed for custody and not for punishment *(gaola, quæ ad custodiendum deputatur & non ad puniendum)*"; Bracton (Rolls Series), ii, 288.

were bailed out. Indeed, in this portion of roll, there is not one single instance of a prisoner being brought up in custody for trial. The criminal jurisdiction of the county court, although extensive at one time, had, by the Assizes of Clarendon[1] and Northampton,[2] and the 24th article of Magna Charta, been cut down to a very low limit. True, it had been known to burn a man for arson, but then the court had the King's writ,[3] and it is hardly likely that these writs were frequently granted. It had also hanged men caught with stolen goods in their possession.[4] The hundred court, too, had hanged a man for burglary and larceny.[5] Still such cases were rare. Every manor in the hundred of Swineshead had its manorial court, and the Templars of the Temple fee in Bristol, and the lord of Redcliff, had also their courts.[6] These tribunals might punish cases of manifest larceny by hanging.[7] They could also deal

[1] Art. 4, 5.

[2] Art. 1, 12.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 216.

[4] *Ibid.*, pl. 217, 280.

[5] *Somerset Pleas (Somerset Record Society)*, pl. 785.

[6] Hunt, *Bristol*, 39, 40; *Somerset Pleas (Somerset Record Society)*, pl. 798. *Rotuli Hundredorum, Hen. III. et Edw. I. (Record Commission)* i, 177.

[7] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd. xxii. The Earl of Gloucester claimed the privilege of trying and hanging a man for manifest theft; *Ibid.*, pl. 243. The lord of Berkeley enjoyed a similar privilege; Smyth, *Lives of the Berkeleys*, i, 192. So did the Abbot of Tewkesbury, in the district outside Lawford's Gate and in Redland; but he had to use the *Judicialia* of the King in

with minor acts of violence and dishonesty. And the burgesses of Bristol had cognizance of certain crimes by their right to hold view of frankpledge.[1] But, besides the powers possessed by these tribunals, a system of summary justice obtained in some parts, which effectually stopped the career of many criminals. The Northumberland Assize Rolls for the thirteenth century show several instances of felons caught redhanded being beheaded on the spot without the semblance of a trial,[2] and such like summary justice was not unknown in Gloucestershire.[3] This record relates how that eleven thieves were hanged for killing three women at Barton Regis,[4] and although it is not clear when this happened, or by what authority they were hanged, it certainly was not by any judgment given by itinerant justices.[5] After, however, making the fullest allowance for local administration of justice, and in spite of the few who managed to get burnt, hanged, or beheaded, the

Bristol; *Placita de Quo Warranto, Edw. I. II. et III. (Record Commission)*, 246. Mabel Bishop was taken with the theft *(cum latrocinio)* at Redcliff and hanged; *Somerset Pleas (Somerset Record Society)*, pl. 800. So late as the reign of Edward the First there were thirty-five private gallows in Berkshire alone; Mrs. Green, *Henry the Second*, 119.

[1] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 34. *The Court Baron (Selden Society)*, 64, 71, 74, 90, 93.

[2] *Northumberland Assize Rolls (Surtees Society)*, 70, 73, 79, 80, 84, 320, 360.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 53, 89, 362.

[4] No. 4.

[5] *Select Pleas of the Crown (Selden Society)*, pl. 140; a similar case occurred at Kidderminster in 1221.

thirteenth century was by no means a bad time for criminals.

And now, the better to understand our document, let us glance at the political landscape, for great men are abroad, and the time is pregnant with weighty issues. Certain periods in a nation's history show comparative stagnation—a decade, or a generation, or even a century, counts almost for nothing. But there are times when event succeeds event, and the rise and fall of parties, and the opening and closing of epochs are compressed within a small space. And such a space is that covered by this record. Six years before, the Great Charter had been signed that closed one epoch and began another; that enunciated rights and liberties which had been striving for expression for many weary years; that created a new political party, and started a troubled and factious contest lasting for upwards of eighty years. It was a treaty between two powers which mistrusted one another so much that immediately after entering into the solemn compact, each set to work to relieve itself of the consequences. It was easy enough to make peace on paper; the difficulty lay in carrying it out. Whilst the barons transferred their garrisons from the royal castles to their own, John fortified his strongholds and appealed to Rome for support.[1] The Pope

[1] Stubbs, *Constitutional History of England*, 4th Edit., ii, 6, 7.

annulled the Charter, forbade John to keep his oath, and called the barons to account for their conduct.[1] But still there was no peace, and sentence of excommunication was published in the presence of the baronial army. Stephen Langton, Archbishop of Canterbury, who was charged to excommunicate the King's enemies, refused and was suspended.[2] Pandulf, the Pope's envoy, together with the Bishop of Winchester and the Abbot of Reading, commenced personally excommunicating some of the most prominent leaders.[3] War broke out, and the barons sought foreign aid.[4] John, filled with fiery activity, ravaged the country from north to south, and placed the great estates in the hands of his adventurers.[5] But the loss of his fleet made a French invasion possible, and Lewis, at the invitation of several of the barons, came over and fought with some success.[6] Many of the earls now forsook John, who, fighting with a blind and savage energy, swept to and fro through the land, wreaking vengeance on friend and enemy, and leaving a track of fire and blood only ended by his death.[7]

[1] Stubbs, *Constitutional History of England*, 4th Edit., ii, 9.

[2] Maurice, *Stephen Langton*, 224–5.

[3] Stubbs, *Constitutional History of England*, 4th Edit., ii, 7, 8.

[4] *Ibid.*, ii, 8, 9.

[5] *Ibid.*, ii, 10, 11, 12.

[6] *Ibid.*, ii, 9, 14, 15, 16.

[7] 19th October, 1216; Roberts, *Excerpta è Rotulis Finium (Record Commission)*, Introd. vol. i, p. ii.

On the 28th of October, 1216, Henry the Third was crowned at Gloucester.[1] On the 12th of November a council was held at Bristol of bishops, earls, ministers, and warriors, at which the Earl of Pembroke was appointed *rector regis et regni*, and the Great Charter was republished.[2] The war continued by fits and starts, but the barons became more and more dissatisfied with Lewis, whose cause gradually declined until the battle of Lincoln ended the struggle.[3] Then followed a general pacification crowned by a second re-issue of Magna Charta.[4] During Henry's first years his advisers were, besides the Earl of Pembroke, Hubert de Burgh and Gualo, the Pope's legate.[5] But the Earl was dead and Gualo gone before the close of 1219,[6] and Henry came under the influence of Peter des Roches, whose policy was to support the foreign influences which Langton and Hubert were trying to eliminate.[7] On the 17th of May, 1220, the King, then thirteen years of age, was crowned again, and the homages paid at his coronation were to be followed by the resumption into the hands of

[1] Stubbs, *Constitutional History of England*, 4th Edit., ii, 18.
[2] *Ibid.*, ii, 19–21.
[3] *Ibid.*, ii, 24.
[4] *Ibid.*, ii, 25, 26.
[5] *Ibid.*, ii, 29.
[6] *Ibid.*, ii, 31.
[7] *Ibid.*, ii, 31. Maurice, *Stephen Langton*, 241.

the King of the royal castles which were still held by John's favourites.[1] The barons pledged themselves to enforce the surrender, but were false to their oath, and gave as an excuse their distrust of Hubert. A party was formed, the chiefs of which were William of Aumâle, Falkes de Breauté, and Peter de Mauley.[2] Bristol Castle was one of those strongholds that was exercising the mind of the King. Although not distinctly hostile, it was troublesome on account of a promise made to the constable and not kept. The arrangement was that Hugh of Vivonia, the then constable, should be paid one hundred pounds rent and one hundred marks of silver to maintain the castle, and on these sums not being forthcoming, Hugh showed his indignation by refusing to obey any mandate proceeding from his royal master.[3] To such a length did things go, that on four or five occasions orders were issued to seize his lands until the King's decrees were complied with. But the matter appears to have been settled on the Crown paying Hugh out and making him seneschal of Poictou and Gascony.[4] Other castles were, however, not so easily secured. Newark, Sauvey, and Rockingham had to be besieged

[1] Stubbs, *Constitutional History of England*, 4th Edit., ii, 31, 32.
[2] *Ibid.*, ii, 32, 33.
[3] Shirley, *Royal Letters (Rolls Series)*, i, 90.
[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 445.

before they surrendered.[1] Biham was only dismantled after a long struggle and enormous expense,[2] and it was not until 1224 that anything like peace was restored. Truly, stirring times were these of the eyre, during which few towns were privileged to play a more important part than that performed by Bristol.

The borough (*burgus*) proper, was that division of the town within the walls, and was entirely situate on the Gloucestershire side of the River Avon.[3] But the boundaries of the town (*villa*) extended to Bewell[4] on the north, Brightnee Bridge[5] and Aldbery of Knowle on the south, and Sandbrook[6] on the west.[7] The *villata* of the roll[8] was probably co-extensive with the *villa* of the charter granted by John, Earl of Morton, in 1188, and included the Redcliff and Temple fees.

The vill of Redcliff was part of the manor of Bedminster,[9] and had belonged to the lords of Berkeley since the first half of the twelfth century.[10]

[1] Stubbs, *Constitutional History of England*, 4th Edit., ii, 33.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 453*b*.

[3] *Report from the Commissioners on Municipal Corporations, Bristol*, 3.

[4] Near the site of Highbury Chapel.

[5] East Street, Bedminster.

[6] Between Clifton Wood and Brandon Hill.

[7] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 5.

[8] See the heading to the Bristol pleas:—"Placita Corone de *villata* Bristollie."

[9] Hunt, *Bristol*, 22.

[10] Smyth, *Lives of the Berkeleys*, i, 34, 35.

Although Redcliff was not fully joined to the old borough until 1373,[1] it is evident that when John granted the famous charter of liberties to the burgesses of Bristol, Maurice of Berkeley was willing that his vassals should enjoy the same privileges, for we find him attesting the deed as one of the witnesses.[2] Sometimes the men of Redcliff appeared before the justices at Bristol, sometimes in Somerset. But in 1227 the King directed that all pleas for Redcliff should be taken before the justices in Somerset, and that the sheriff of Gloucestershire should not intermeddle.[3] This regulation was duly observed, and in 1242 Redcliff answered before the justices in eyre at Ilchester.[4] In 1247 the instruction was revoked, a charter being granted ordering the burgesses of Redcliff to for ever answer before the justices as the burgesses of Bristol answer and where they answer.[5]

The Temple fee lay on the eastern side of Redcliff. It had formerly been part of the manor of Bedminster, and was given by Earl Robert to the Knights Templars.[6] Its wealth may be gauged by the amount it

[1] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 39-61.

[2] *Ibid.*, 11.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, ii, 167*b*.

[4] *Somerset Pleas (Somerset Record Society)*, p. 238.

[5] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 14.

[6] Hunt, *Bristol*, 39.

contributed to the aid levied by King John in 1210—Temple paying 500 marks, and Bristol and Redcliff contributing 1,000 marks each.[1] The men of the Templars were troublesome people, notwithstanding their evident sense of humour, for when the justices came on this eyre a neat little piece of juggling was disclosed. At the request of the burgesses of Redcliff and the vassals of the Templars, the judges took their presentment at Bristol. But on the first day the vassals of the Templars failed to put in an appearance, and were amerced. Then they came, and claimed to answer by themselves, and not with the burgesses of Redcliff. It was shown that they were accustomed to answer with others, either at Bristol, or in the county of Somerset, at the will of the King, and, finding themselves cornered, they consented to answer with the burgesses of Redcliff, but not outside the county of Somerset. The vassals of the Templars were reminded that when the justices were in Somerset they claimed to be Gloucestershire men. This, however, had no effect, and the matter was referred to Westminster.[2] In the 27th year of Henry the Third (1242-1243), they again showed their contumacy by refusing to come and answer for anything before the

[1] Seyer, *Memoirs of Bristol*, ii, 45.
[2] No. 37.

justices, who were then sitting at Ilchester. And it was recorded that they forbade the bailiffs and coroners of Redcliff, and the bailiff of Bristol, to enter on their land to make any attachments.[1] Indeed, so opposed were the lords of the Temple fee to interference with their rights and jurisdiction, that they kept up a running dispute with the burgesses of Bristol which ended only with the dissolution of the Order in 1312.[2]

Bristol possessed important jurisdictional privileges. It had a hundred court which was held once a week.[3] No one could be condemned in a matter of money unless according to the law of the hundred, which was, by forfeiture of forty shillings.[4] No burgess could plead or be impleaded out of the walls of the town in any plea except pleas relating to foreign tenures which did not belong to the hundred of the town,[5] and pleas in respect of debts lent in Bristol, and mortgages there made were to be held in the town according to the custom of the town.[6] Obviously,

[1] *Somerset Pleas (Somerset Record Society)*, pl. 798.

[2] Seyer, *Memoirs of Bristol*, ii, 134–136.

[3] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 7.

[4] *Ibid.*, 7.

[5] *Ibid.*, 6. In 1183 the men of Bristol paid a fine for this privilege during the absence of the King from England; Madox, *History and Antiquities of the Exchequer*, ii, 398.

[6] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 7.

franchises such as these were of great importance, for they gave occasion for communal action, and, consequently, when a burgess was impleaded in the King's court, it became the duty of the borough officers to come and claim their court.[1] The burgesses enjoyed in their moot a procedure which, in some respects, was of a more enlightened character than that which obtained in the royal tribunal. For instance, no one could argue his case in miskenning.[2] And what is, perhaps, the most important of all, trial by battle was excluded unless the slayer was appealed for the death of any stranger killed in the town, and who did not belong to the same.[3] This last privilege clearly demonstrates that in one feature at least the civic was in advance of the royal justice, and that the burgesses had greater faith in trial by jury than in the duel.[4] And it is well to remember that the appeal of battle, although denounced by the Church, discouraged by the Great Assize, and gradually repudiated by the English people, never ceased to be

[1] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 643.

[2] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 7.

[3] *Ibid.*, 6. The citizens of London had enjoyed the privilege since the time of Henry the First; *Liber Albus*, 115. In 1200 the citizens of Lincoln produced their charter to the justices exempting them from the duel; *Select Pleas of the Crown (Selden Society)*, pl. 82.

[4] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 643.

the law of the land until the reign of George the Third.[1]

The criminal jurisdiction of the borough extended to the shedding of blood and hamsokne.[2] In all probability it likewise embraced infangenthef and utfangenthef, but no direct grant was made of these until 1373.[3] The borough had to appear before the justices in eyre, but was privileged to appear there by twelve of its own men as though it were a hundred, thus preventing strangers from making presentments about events which had occurred within the borough walls.[4]

Unlike a few other boroughs, it did not enjoy the franchise of the *return of writs*, and, in consequence, the officers of the sheriff of the county of Gloucester might enter the town and serve the King's writs, and execute the processes of the King's court. When Bristol obtained this privilege is not stated, but it must have been sometime prior to 1313, for in that year the King sent a mandate to the sheriff of Gloucestershire ordering him no longer to make a return of writs to the mayor and

[1] Inderwick, *The King's Peace*, 66. The sensational case *Ashford v. Thornton*, (1 Barn and Ald, 405), was the means of causing an Act to be passed abolishing such mode of trial for the future. A picturesque account of this case appears in Thornbury's *Old Stories Retold*, 228–241.

[2] *The Little Red Book of Bristol*, i, 41.

[3] *Somerset Pleas (Somerset Record Society)*, pl. 799. Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 46.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476*b*. Pollock and Maitland, *History of English Law*, 2nd Edit., i, 644.

bailiffs of the borough.[1] This privilege was, however, restored to the burgesses in 1317,[2] and in 1373 it was confirmed by charter.[3]

Bristol had been the King's free borough from time immemorial.[4] The land of the town was held by the burgesses direct from the sovereign without any intermediate lord by service of land-gable, and when a tenement escheated it escheated to the King.[5] The boundaries of the town extended considerably beyond the borough wall, and many of the townsfolk must, at any rate nominally, have belonged to the rural manors of their lords.[6] But when John, Earl of Morton, decreed that none of them should answer in any court outside the walls in any plea except those relating to foreign tenure, he, as it were, detached them from their manors and defied the principle of feudal justice.[7] Those who settled around the borough became part of the burghal community, although they might not be the King's tenants. But the lords of

[1] *Rotuli Litterarum Clausarum*, 6 Edw. II, m. 6.

[2] *Rotuli Litterarum Patentium*, 10 Edw. II, Pt. i, m. 3.

[3] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 56.

[4] Seyer, *Memoirs of Bristol*, i, 508. Ricart's *Kalendar (Camden Society)*, 2. 14 and 15 *Year Book*, 184.

[5] No. 31. Ricart's *Kalendar (Camden Society)*, 2. Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 10.

[6] *Domesday Book*, tom. 1, fol. 3, 4*b*, 34, 43*b*, 66, 166, 248, shows that even in the most privileged cities many burgesses were attached to particular manors.

[7] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 645.

Redcliff, possessing as they did a district almost as important as the ancient borough itself, continued to hold their own courts, and exercised jurisdiction therein long after John granted the charter to the men of Bristol.[1] Not until 1247 did the burgesses of Redcliff pay scot and lot with those of Bristol, and only when Bristol was created a county in 1373 was the jurisdiction of the Berkeleys completely broken.[2]

Bristol had attained a position of considerable importance in consequence of its commercial enterprise. So early as 1155,[3] Henry the Second had granted to the burgesses freedom of toll, passage, and every other custom, throughout England, Normandy, and Wales.[4] He had also given them the city of Dublin, with all the liberties and free customs which they had at Bristol.[5] The trade with Ireland and Scandinavia was considerable, and ships from other foreign countries crowded the port.[6] Soap making, tanning, and cloth making, were the chief industries.[7] A protective policy was adopted as regards the sale of leather, corn, wool,

[1] Smyth, *Lives of the Berkeleys*, i, 195.

[2] Hunt, *Bristol*, 61, 85.

[3] *Ibid.*, 71, *note*.

[4] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 1, 2.

[5] *Ibid.*, 3, 4.

[6] Hunt, *Bristol*, 44.

[7] *Ibid.*, 44.

and wine, none being allowed to buy either of these products except from a burgess, and no stranger merchant might remain in the town for the purpose of selling his goods but for forty days.[1] At least, two great fairs were held annually, securing for the merchants a wider market for their goods, and for the visitors more variety for their purchases. All classes of the population gathered together on these occasions, from the noble and prelate to the villein, and traders from all parts of England and the continent attended.[2] One of these fairs was held on Saint James's Day at the back of the Priory,[3] and the other on the feast of Saint Michael. Our record throws a curious light on the conduct of the Constable of the Castle with reference to the Michaelmas fair. Formerly, merchants were allowed to sell heavy goods such as wool, hides, iron, and woad, in the town, because of the difficulty of carting them to the fair. Robert of Roppelay exacted tribute from the merchants for this privilege. The levy appears to have been regularly made by the succeeding constables, for we find the merchants complaining to the justices and asking to be relieved from the fine.[4] Bristol was the great mart for the

[1] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 8.

[2] Gibbins, *The Industrial History of England*, 61.

[3] *Rotuli Chartarum (Record Commission)*, vol. i, pt. i, 3. Hunt, *Bristol*, 44.

[4] No. 36.

fish of the channel.[1] The fishmongers, however, had the same kind of difficulty to contend with as had the Michaelmas traders. Before 1208 the constable was allowed to purchase four messes of herrings at two pence less than other purchasers, but Gerard of Athée, not content with this, exacted as much as two shillings tax on every last of herrings, and this, added to what was due to the King,[2] must have proved a heavy impost. When the justices came to Bristol in 1221 the fishmongers were still groaning under the imposition, and on complaint being made by them, the justices ordered that they be relieved of the burden.[3] The constables appear to have been a perpetual source of annoyance to the merchant class, filching from them at every opportunity. On the other hand, the merchants tried to make up from the inhabitants what they lost to the constable. For example, the woad-mongers, since the time of Peter of Chanceaux,[4] had been selling woad with the quarter measure smoothed off instead of piled up as was formerly the custom[5]; and the cloth

[1] *Rotuli Hundredorum, Hen. III. et Edw. I. (Record Commission)*, i, 168. Hunt, *Bristol*, 44, 45.

[2] *Calendarium Inquisitionum post Mortem sive Escaetarum (Record Commission)*, i, 88*b*.

[3] No. 35.

[4] Peter of Chanceaux was Constable of Bristol Castle from 1212 to 1215.

[5] No. 33.

merchants had been selling cloth of short measure.[1] Having been cheated for nine years, the patience of the people became exhausted. They, too, complained to the justices, and the King's bailiff was ordered to see that for the future woad was sold in the old manner, and that all cloth goods were protected by the Assize of Breadth. The wine trade prospered, the King kept cellars in the town, and the Close Rolls are crowded with entries concerning prices, gifts, and transport, of wine.[2]

In 1210 the town was farmed by Engelard of Cigogné.[3] Prior to this it had been farmed by Gerard of Athée.[4] In 1215 Philip of Albigny farmed it,[5] and at the time of the eyre, John of the Florentines.[6] In 1224 it was farmed by the burgesses themselves.[7] By this they did not become collectively or corporatively the *domini* or the *tenentes* of the soil within the boundary of the town,[8] for, as we have seen, when lands escheated they escheated to the King.[9] But

[1] No. 34.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 38*b*, 58, 61, 80, 92*b*, 93, 94*b*, 96*b*, 98, 105, 116, 120, 145, 149*b*, 150, 155*b*, 178*b*, 181*b*, 200, 281*b*, 286*b*, 348, 391, 534*b*, 557*b*, 564*b*, 573, 576, 589*b*, 604, 619*b*, 620, 631*b*, 639*b*, 647.

[3] Seyer, *Memoirs of Bristol*, i, 532.

[4] Smyth, *Lives of the Berkeleys*, i, 90.

[5] *Rotuli Litterarum Clausarum (Record Commission)*, i, 225.

[6] *Ibid.*, 523*b*, 530.

[7] *Ibid.*, 588*b*, 596, 604.

[8] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 651.

[9] No. 31.

the right to approve the intramural and extramural *waste* had been acquired by the burgesses in 1188.[1] In consequence, quays were built and the riverside greatly improved,[2] but it is doubtful if the burgensic community derived any pecuniary advantage from the banks, void grounds, and spaces.

The officers, royal and municipal, controlling the borough, included the constable of the Castle, the coroners, the mayor, the bailiffs, the prepositors, the *barones*, and the *probi homines*.

Of these the constable wielded the greatest power. And of all names that are to be met with in this portion of roll the most interesting and important are those of men who had been constables of Bristol Castle. "*Castellani*," said my lord Coke, in commenting on Magna Charta, "were men in those dayes of account, and authority, and for pleas of the Crown, etc., had the like authority within their precincts, as the Sheriffe had within his Bailiwick before this Act. . . . And it is to be observed, That regularly every Castle containeth a Mannor: so as every Constable of a Castle, is Constable of a Mannor, and by the name of the Castle the Mannor shall passe, and by the name of

[1] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 10.

[2] No. 32.

the Mannor the Castle shall passe."[1] The Castle fee of Bristol was a royal district entirely independent of the town officers.[2] It lay within the county of Gloucester, and became a harbour of refuge for the outlawed, excommunicated, and other lewd offenders, who fled from justice. It was exempt from all municipal government and authority, and if any felonies were there committed the offenders were sent to Gloucester to be tried and punished,[3] unless, by special favour the pleas were taken in Bristol. The Castle itself was a fortress which had played a prominent part in the time of the anarchy,[4] and controlling, as it did, one of the most important sea-port towns, the position of constable was of great authority and invariably held by a tried military commander. As representative of the King this officer enjoyed the right to interfere in local matters. From 1300 the mayors fetched and took their oath and charge from him at the Castle gate,[5] the townspeople paid tribute to him, and did they encroach on his rights they paid the penalty by forfeiting their charter.[6]

[1] 2 *Inst.*, 31.

[2] *The Annals of Roger de Hoveden (Bohn's Edition)*, i, 397. The Castle first became a royal possession in 1175.

[3] Ricart's *Kalendar (Camden Society)*, 117.

[4] Round, *Geoffrey de Mandeville*, 55, 56.

[5] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 26. Ricart's *Kalendar (Camden Society)*, 69.

[6] Seyer, *Memoirs of Bristol*, ii, 74.

This transcript introduces us to no less than five constables—Robert of Roppelay, Gerard of Athée, Peter of Chanceaux, Hugh of Vivonia, and John of the Florentines. Their united service as such covers a period of twenty years, that is, from 1204 to 1224.

Robert of Roppelay[1] was Constable of Bristol in 1204, having succeeded Thomas of Rocheford.[2] King John granted him the *firm* of the manor of Barton[3] as well as honours and rewards in Lincolnshire, Leicestershire, Warwickshire, and other counties.[4] Were a faithful lord required to guard the royal crown and regalia, Robert of Roppelay was at hand to fulfil the trust.[5] John could rely on him obeying his writ to tallage the burgesses for the repair of the Castle fortifications.[6] He could be sure of him keeping a watchful eye on the condition of the Castle mill and its revenues.[7] He could depend on him seeing that the wine ordered to be sent from his cellars at Bristol

[1] Otherwise Ropel, Ropell, Roppesl, Roppesleia, and Roppelle.

[2] *Rotuli Litterarum Patentium (Record Commission)*, 39. Thomas of Rocheford was constable on March 23, 1204. Robert of Roppelay was constable on August 4, 1204; *Rotuli Litterarum Clausarum (Record Commission)*, i, 6*b*. His appointment must therefore have been made sometime between these two dates.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 41*b*. This grant was made on July 12, 1205.

[4] *Ibid.*, 1*b*, 68*b*, 105*b*. *Rotuli Litterarum Patentium (Record Commission)*, 68, 74.

[5] *Ibid.*, 77*b*.

[6] *Rotuli Litterarum Clausarum (Record Commission)*, i, 50.

[7] *Ibid.*, 83*b*.

to different parts of the kingdom reached its destination in safety.[1] And the King knew how to reward such services by grants from the local treasury.[2] On March 6th, 1208, Robert was removed from the constableship of Bristol and the custodianship of Barton. His successor was Gerard of Athée,[3] and when, four days later, he delivered over to Gerard the custody of the prisoners in the Castle,[4] his connection with the town appears to have ceased. The removal of Robert from these offices did not mean that he had forfeited the King's confidence, for in 1213 we find fresh favours being bestowed upon him.[5] In the motive clause of Magna Charta John describes him as one of the noble men (*nobilium virorum*) by whose counsel he acts.[6] It is clear from this that he had taken no overt act against the King, or at any rate had only joined the confederation of barons since their entry into London three weeks previously.[7] But John was false to every obligation that should bind a King.[8] When he signed the Charter he had

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 16, 20*b*, 51*b*.

[2] *Ibid.*, 10.

[3] *Ibid.*, 105.

[4] *Ibid.*, 105*b*.

[5] *Ibid.*, 149*b*.

[6] Stubbs, *Select Charters*, 8th Edit., 296. Between 1202 and 1215 Robert of Roppelay was a witness to no less than sixteen charters; *Rotuli Chartarum (Record Commission)*, vol. i, pt. i.

[7] Stubbs, *Constitutional History of England*, 5th Edit., i, 572.

[8] *Ibid.*, 4th Edit., ii, 17.

no intention of keeping it, and within three months was at war with the barons.[1] Robert of Roppelay joined the party that looked for salvation in foreign aid.[2] Then John flung off his velvet glove. Robert's acres and offices were speedily reduced to a vanishing point,[3] and at the time of the King's death he had not been restored to royal favour. Of the few poor estates which remained Henry the Third relieved him.[4] But on the decline of Lewis's cause in 1217,[5] tired perhaps with unsuccessful struggling, Robert returned to the service of the King.[6]

Gerard of Athée,[7] Robert of Roppelay's successor, was one of John's most faithful followers. He was a villein of the lord of Amboise in Touraine,[8] but how

[1] Stubbs, *Constitutional History of England*, 4th Edit., ii, 8.

[2] *Ibid.*, 9. Saer de Quincy was sent to offer the crown to Lewis, the son of Philip of France.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 229*b*, 243*b*, 245 280, 285*b*.

[4] *Ibid.*, 313.

[5] Stubbs, *Constitutional History of England*, 4th Edit., ii, 24.

[6] *Rotuli Litterarum Clausarum (Record Commission)*, i, 320*b*. As Robert's heir answers for chattels in this roll Robert must have died sometime between September 8, 1217, the day on which he returned to the King's service, and July, 1221, the time the justices were in Bristol. This opinion is supported by the fact of Robert's name not appearing in the first, second, or third re-issue of the Great Charter; Stubbs, *Select Charters*, 8th Edit., 340, 345, 353. Several entries in the Close Rolls for 1218 and 1219 refer to him in the past tense; i, 384*b*, 385, 386*b*, 387.

[7] Otherwise Atia, Acies, Athies, Athiis, Athyes, Aties, Atties, Atyes, and Athie. In a grant from Robert, prior of Bath to John de Novo Vico, he is called Sir Gerard de Atthia; *Two Chartularies of Bath Priory (Somerset Record Society)*, ii, 16.

[8] Philippidos, *Bouquet*, xvii, 217. He was "servus et a servis oriundus utroque parente."

he raised himself from serfdom and became a soldier of fortune is not recorded. In the struggle between John and Arthur he won for the former the fortresses of Chinon and Loches.[1] On John, in 1202, wresting Tours from Philip, he committed it to Gerard's care.[2] In August of the same year he was appointed John's seneschal in Touraine,[3] and in 1204 Loches was put into his keeping.[4] But Philip proved too strong for John. Town after town fell. Garrison after garrison surrendered. Loches shared the fate of the others. Gerard was laid by the heels, and, for a while had ample opportunity to reflect on his position.[5] But as he was fretting in jail waiting for the mortal push, John was cudgelling his brains how to set him free. Such a man was indispensable to the English King, and by hook or crook must be liberated. The moral conscience had not then become so highly developed as to make its appearance when it was not required. Prisons were leaky. Money unlocked all doors. Terms could always be arranged. In 1206 the Master of the Templars received letters patent on the subject of Gerard's ransom.[6] Two thousand marks was the

[1] *Chron. Turon.*, xviii, 294.

[2] *Ibid.*, 296.

[3] *Rotuli Litterarum Patentium (Record Commission)*, 17.

[4] *Ibid.*, 44*b*.

[5] Radulphi de Coggeshall, *Chronicon Anglicanum (Record Commission)*, 146, 152. *Chron. Turon.*, xviii, 297.

[6] *Rotuli Litterarum Patentium (Record Commission)*, 65.

price of his freedom; but Gerard was worth that sum.[1] His wife and son came over to England in 1206.[2] Next year he followed them.[3] Favours rained upon him. The honour, castle, and county of Gloucester, the castle of Bristol, the Barton outside Bristol, and the episcopal lands of Bath and Hereford were committed to his keeping.[4] When England was passing through the desolation of an interdict; when the churches were closed and the bells untolled; when no services were performed, and the administration of the sacraments, except to infants and to the dying, was suspended; when the bodies of the dead were interred without prayer or priest in unconsecrated ground; when this sudden extinction of the forms and aids of religion struck the people with horror[5]—Gerard, like his master, was unmoved, and on the King retaliating by confiscating the lands of the clergy who observed the interdict, his most active aider and abettor was the constable of Bristol. The terror of the period was balm to Gerard's soul. It filled his coffers, increased his power, and added acre on acre to his lands. Bad as John was, yet had he pity for the lepers

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 92*b*, 97, 104.

[2] *Rotuli Litterarum Patentium (Record Commission)*, 56*b*.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd., xiv.

[4] *Rotuli Litterarum Patentium (Record Commission)*, 78*b*, 80, 81*b*, 83*b*. *Rotuli Litterarum Clausarum (Record Commission)*, i, 105.

[5] *Short History of the Catholic Church*, 216.

of Saint Lawrence who resided outside Lawford's Gate, and he, as he said, for the love of God, gave them some land, and, what was still cheaper, his protection.[1] His protection also, gave he, to those of Saint John at Bristol.[2] But Gerard troubled nothing for his master's little pricks of conscience, or actions arising therefrom. He disseised the very lepers of Saint Lawrence, whom John had befriended;[3] he plundered the abbeys and churches of Bath,[4] Langley,[5] Muchelney[6] and Hereford;[7] he let the canons of Keynsham[8] and Saint Augustine[9] feel the weight of his hand. But Gerard did not stop at churches. He robbed the brewers[10] and fishmongers of the borough.[11] He charged fifty marks for binding and loosing a Fleming in the house of Philip Long at Redcliff.[12] Because Agnes, Nicholas Binder's sister, dared to appeal Walter of Oxford for the death of her brother, Gerard took from her ten marks, and the

[1] *Rotuli Chartarum (Record Commission)*, vol. i, pt. i, 175*b*.

[2] *Ibid*, 77*b*.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 227.

[4] *Rotuli Litterarum Patentium (Record Commission)*, 110.

[5] *Ibid.*, 110.

[6] *Ibid.*, 111.

[7] *Ibid.*, 112.

[8] *Rotuli Litterarum Clausarum (Record Commission)*, i, 107.

[9] *Ibid.*, 113*b*.

[10] Smyth, *Lives of the Berkeleys*, i, 90. MS. Charter to Bristol, 14 Henry III. Seyer, *Charters and Letters Patent . . . to the Town and City of Bristol*, 9, 19.

[11] No. 35.

[12] No. 38.

wretched appellee had to pay no less a sum than fifty marks.[1] Why, no one knows. Small wonder, then, that complaints were being continually made respecting the extortions of the foreign sheriffs.[2] For four years Gerard literally wallowed in plunder. He might, however, rob with impunity, for he was invaluable to John; and when a trustworthy and skilful warrior was wanted to suppress the powerful noble, William of Braose, Gerard was chosen for the task.[3] But after September 4th, 1213, he laid up no more treasure.[4] Thence the rolls become suddenly silent, and Gerard disappears into the night from whence he came. No stronger proof of his fidelity to John can be given than that contained in the 40th article of the Barons, which demanded of the King the absolute removal from their bailiwicks of the kinsmen (*parentes*) and the whole following (*sequelam*) of Gerard, so that they should thenceforth have no bailiwick.[5] The 50th article of Magna Charta confirmed the demand.[6] Truly of

[1] No. 14.

[2] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 92, 93, 108, 154, 156, 171, 227, 245, 246, 260, 364, 376, 378, 405, 439, 444.

[3] Rymer's *Fœdera* (London, 1704), i, 162.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 149.

[5] Stubbs, *Select Charters*, 8th Edit., 294. "Ut rex amoveat penitus de balliva parentes et totam sequelam Gerardi de Atyes; quod de cetero balliam non habeant. . . ."

[6] *Ibid.*, 302. As the Articles of the Barons and Magna Charta only mention the kinsmen and following (*parentes et totam sequelam*) of Gerard, it is tolerably clear that Gerard had passed beyond the reach of the barons. But if Dr. Stubbs is

Gerard's many vices, did the barons make thongs to scourge his progeny. Take him for all in all he is one of the most brilliant examples in John's reign of an unscrupulous, cruel, but withal, brave and faithful mercenary. It is not for us to judge him. He has passed into the sphere of history; and history knows naught of morals. Besides, there is no absolute incongruity between loyalty and crime. Sticking at nothing when once the gates of passion were opened, fighting with the ferocity of a tiger at bay where necessity demanded, true unto death to the master who paid him well for his services, such was Gerard of Athée.

Peter of Chanceaux,[1] Gerard's comrade in arms, succeeded Engelard of Cigogné as constable about 1212.[2] So early as the year 1200 he was under John's protection,[3] and in 1207 he came over to England with Engelard and his brothers Andrew and Gio, and

correct, he was only working behind the scenes strengthening his position and preparing to resist any attempt to dislodge him, for, following Matthew Paris, the eminent historian relates that Gerard was one of the minor leaders of the party formed in 1221 against the justiciar Hubert de Burgh; *Constitutional History of England*, 4th Edit., ii, 33. If such were the case it is strange that Gerard's kinsmen and following should have been proscribed by the Charter, and not Gerard himself. Had the principal been alive the barons were more likely to have struck at him than at his following. To differ from Dr. Stubbs is probably to err, but still we cannot help thinking that the view we have expressed is the correct one, and that Gerard died sometime prior to the signing of Magna Charta.

[1] Otherwise Cancellis, Cancell, Chancels, and Chaunceaws.

[2] *Somerset Pleas (Somerset Record Society)*, pl. 354.

[3] *Rotuli Chartarum (Record Commission)*, vol. i, pt. i, 98*b*.

the manor of Hisseburn in Hampshire was immediately given to them to support them in the King's service.[1] From this time until 1212, when he comes before us as constable of Bristol, the rolls are silent as to Peter's doings.[2] But from the attitude the barons adopted towards him subsequently, there can be no doubt he was working strenuously on behalf of John.[3] Could we but build up his history during these five years we should probably be able to produce a record of plunder similar to that concerning Gerard of Athée. The first writ directed to him as constable of Bristol is dated August 5th, 1212.[4] From that time up to July 20th, 1215, when he was succeeded by Philip of Albigny,[5] he appears to have been kept busily engaged. A constable had many duties to perform. Not the least onerous was that of preparing things for transport. Wine, leather, coats of mail, shoes, swords, bows and arrows, and a host of other necessary articles were dispatched by Peter from the Castle to various parts of the country.[6] Many an anxious moment must

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 79*b*. The writ is dated March 16, 1207.

[2] *Ibid.*, 121*b*.

[3] *Articles of the Barons*, art. 40. *Magna Charta*, art. 50. Stubbs, *Select Charters*, 8th Edit., 294, 302.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 121*b*.

[5] *Ibid.*, 221. *Rotuli Litterarum Patentium (Record Commission)*, 149*b*.

[6] *Rotuli Litterarum Clausarum (Record Commission)*, i, 121*b*, 126*b*, 135, 135*b*, 199*b*.

he have spent wondering whether in such troublous times his men would reach their destination in safety. On June 15th, 1215, the barons demanded his banishment, and John signed the Charter confirming it.[1] Five weeks later Bristol Castle lowered its drawbridge for him to pass out.[2] We can only surmise what Peter's subsequent career was. The rolls fail us as they do with Gerard.[3] Once so eloquent they instantly become dumb. Perchance Peter returned to France to continue his career as a soldier of fortune. It may be, tired of intriguing and fighting, he retired to his native village to end his days as a tiller of the soil.

Hugh of Vivonia[4] was made constable of Bristol in 1217,[5] following Saurico de Malo Leone[6] and Amfridus Brito.[7] He also held the manor of Barton, the wood of Furches, the chase of Keynsham, the lordships of Bitton and Shepton, and the castle of

[1] The 40th Article of the Barons demanded his exile: the 50th Article of Magna Charta declared the King's consent to such a proceeding.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 221. *Rotuli Litterarum Patentium (Record Commission)*, 149*b*.

[3] The last entry concerning Peter in the Close Rolls is that of July 20, 1215 (i, 221), and the last entry in the Patent Rolls is dated the same day (149*b*).

[4] Otherwise Vivon, Vyvoy, Vivunia, Vivian, Vivone, Vyvun, and Wivon.

[5] *Rotuli Litterarum Clausarum (Record Commission)*, i, 305, 320*b*. Certainly as early as April 7, 1217.

[6] *Ibid.*, 294, 454*b*.

[7] Placita &c. 3 and 4 Hen. III., contained in *Documents Illustrative of English History in the 13th and 14th Centuries (Record Commission)*, 327.

Berkeley.[1] The latter was taken from Robert of Berkeley, as a punishment for having joined the barons, and given to Hugh of Vivonia, who, out of the profits of the lands, was to maintain the garrison at Bristol Castle.[2] In addition to these favours many other estates were conferred upon him to support him in the King's service.[3] It was this constable, as we have seen, who for three years defied the King by refusing to deliver up Bristol Castle. In 1221 Hugh was appointed seneschal of Poictou and Gascony, and apparently filled the office for over twenty years.[4] By the gifts bestowed upon him it is evident that he became completely restored to the King's confidence.[5] And in possession of that confidence he died, sometime about 1244, for an inquiry is then being made as to what lands he held at that time.[6]

John of the Florentines,[7] or as he is more commonly called, John de Ferentin, was holding the office of constable when the justices of this eyre visited

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 311, 340*b*, 350, 354*b*, 387, 395, 409*b*, 426. *Rotuli Litterarum Patentium (Record Commission)*, 161*b*, 194.

[2] Smyth, *Lives of the Berkeleys*, i, 94.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 243.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 445, 456, 458, 460, 461*b*, 464*b*, 467. Rymer's *Fœdera* (London, 1704), i, 251, 409, 420.

[5] *Rotuli Litterarum Clausarum (Record Commission)*, i, 601, ii, 38*b*, 203.

[6] *Calendarium Inquisitionum post Mortem sive Escaetarum (Record Commission)*, i, 2.

[7] Otherwise de Florentinis, de Florentin, and de Ferentin.

Bristol. It was chiefly through him that the men of the hundred of Swineshead were permitted to have their pleas heard there instead of journeying to the county town of Gloucester.[1] His control of the borough lasted until 1224.[2] During his term he repaired the houses in the Castle fee.[3] The *firm* of the town was under his management, and out of it he sent a goodly sum to restore the houses in Marlborough Castle.[4] Henry the Third regarded him with high esteem,[5] and when a thousand marks were required for the use of the Pope, John was entrusted to convey the treasure.[6] The constableship of Bristol was no sinecure.[7] If lands were taken into the King's hands in the town, or in Bedminster, or in Redcliff, the constable was responsible for them.[8] If ships were required to take troops to Ireland it was the constable who had to see to their being furnished.[9] And John proved equal to the work, and continued

[1] No. 1.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 624.

[3] *Ibid.*, 530.

[4] *Ibid.*, 523*b*.

[5] *Ibid.*, 492*b*, 521. The jurors of Somerset seem not to have valued him so highly as did the King, for at the jail delivery held at Ilchester in 1225, one James the forester was exacted and outlawed, principally because he was known to have been wandering about with John de Florentin, the constable; *Somerset Pleas (Somerset Record Society)*, pl. 199.

[6] *Rotuli Litterarum Clausarum (Record Commission)*, i, 486*b*.

[7] See the Close and Patent Rolls for this period.

[8] *Rotuli Litterarum Clausarum (Record Commission)*, i, 533*b*.

[9] *Ibid.*, 525*b*.

to successfully manage both civil and military affairs affecting the town and port until he was succeeded by Ralph of Wilinton.[1]

The Coroners occupied practically the same position as the old *justicia*. They were royal officers representing the central authority, in the same way as the bailiffs represented the local authority.[2] The office was a young one, the Articles of the Eyre of 1194 being the first document clearly naming it.[3] No authoritative statement as to the duties of coroners was made until Bracton's time.[4] But Bracton's book was written forty years after the pleas we are considering were taken. This record, then, is of undeniable importance, for we learn who the Bristol coroners were, and what were some of their duties in the very infancy of the office. The position of the coroners was of great authority. Until the 24th article of Magna Charta declared that no coroner should hold pleas of the Crown, they might not only receive accusations against offenders, but might try them.[5]

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 624. It is not uninteresting to speculate as to whether John of the Florentines was the priest to whom Bishop Gregory addressed a letter in 1231, as follows: ". . . dilecto, filio, Magistro Johanni de Ferentino Subdiacono Nostro, Archidiacono Norwicensi"; Rymer's *Fœdera* (London, 1704), i, 319.

[2] Round, *Geoffrey de Mandeville*, 107–110.

[3] *Chronica Magistri Rogeri de Houedene (Rolls Series)*, iii, 262–267. "Praeterea in quolibet comitatu eligantur tres milites et unus clericus custodes placitorum coronae"; (cap. 20).

[4] Stephen, *History of the Criminal Law*, i, 217.

[5] Stubbs, *Select Charters*, 8th Edit., 300; "Nullus vicecomes, constabularius, coronatores, vel alii ballivi nostri, teneant placita coronae nostrae."

In addition to holding inquests in cases of deaths from violence or accidents, they kept a record of outlaws, received the confession and abjuration of felons who had fled to sanctuary, conducted jury trials in ordinary civil pleas, and, notwithstanding the provisions of Magna Charta, passed judgments on felons caught in the act.[1] They caused the chattels of persons against whom the inquest jury found a verdict of felony, to be appraised and placed in charge of the township, to be forfeited to the Crown if the accused were subsequently found guilty at his trial before the justices in eyre.[2] The appointment was an honorary one, but, in all likelihood, the coroners were as prone to sell justice as were the sheriffs, for the Statute of Westminster, 3 Edward I, expressly forbade them to take any reward. Not until 3 Henry VII, c. 1, were fees allowed them. In the thirteenth century there were usually four coroners in every county, each assisted by a *clericus*.[3] Some boroughs, and amongst them Bristol, enjoyed the

[1] Gross, *Select Coroners' Rolls (Selden Society)*, Introd., xxv.

[2] *Ibid.*, xxiv.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 412. *Rotuli Litterarum Clausarum (Record Commission)*, i, 402*b* (Norfolk and Suffolk); 622*b*, 648 (Salop). *Northumberland Assize Rolls (Surtees Society)*, 372. *Somerset Pleas (Somerset Record Society)*, pl. 381, 1035. At times some counties had three coroners; *Northumberland Assize Rolls (Surtees Society)*, 68; *Somerset Pleas (Somerset Record Society)*, pl. 84. Devon and Leicestershire at one time appear to have had two each; *Rotuli Litterarum Clausarum (Record Commission)*, ii, 67; *Abbreviatio Placitorum (Record Commission)*, 55.

distinction of having their own coroners. To obtain this favour a special grant from the King was necessary.[1] The number in the towns varied from one to four.[2] Bristol had the larger number, their names being Michael Bohulk, Thomas Mitchell, Roger Fellard, and William Taylor.[3] These officers were absolutely distinct from the coroners of the adjoining counties.[4] By whom they were elected is uncertain, but probably by the whole body of burgesses, and subsequently sworn in in the county court at Gloucester by the sheriff or the justices in eyre.[5] As the county coroners were to the sheriffs so the borough coroners were to the municipal officers.[6] Early charters describe them as being elected to keep the pleas of the Crown and to see that the reeves treated rich and poor justly and

[1] *Placita Quo Warranto (Record Commission)*, 18; "Officium coronatoris mere spectat ad coronam regis ad quod nullus deputari potest sine speciali facto domini regis"; (4 Edw. III). There is no trace of a grant relating to Bristol until 1256.

[2] In 1218 Lincoln had four coroners; *Rotuli Litterarum Clausarum (Record Commission)*, i, 364*b*. In 1221 Worcester had two; *Select Pleas of the Crown (Selden Society)*, pl. 151. Newcastle-upon-Tyne and Warnemuth had two and one respectively; *Northumberland Assize Rolls (Surtees Society)*, 367, 331.

[3] No. 40.

[4] The coroners for Gloucestershire were Adam Fitz-Nigel, Simon de Matresdon, Henry de Drois, and Hugh of Cuillardvill; Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 412. In 1225 the coroners for Somerset were William de Bakelr', Richard de Cumbe, and Peter de Pudinton', and these had probably held office for some time; *Somerset Pleas (Somerset Record Society)*, pl. 381.

[5] Gross, *Select Coroners' Rolls*, Introd., xxii. In the 14th century the coroner was sworn in before the commonalty in the Guildhall. For an early form of oath, see *The Little Red Book of Bristol*, i, 50.

[6] Gross, *Select Coroners' Rolls (Selden Society)*, Introd., xxvii.

legally.[1] In 1256 the number of coroners for Bristol was reduced from four to one. By charter of that date the burgesses were directed out of themselves to choose and create a coroner for the purpose of making attachments of pleas of the Crown arising within the town and the liberties of the same. This officer was to answer before the justices itinerant concerning the attachments made by him, and concerning the other things which relate to the office of coroner, as the other coroners were wont to do.[2]

The Mayor was the head of the *communa*, elected by the *barones*, and presented and admitted at the King's Exchequer.[3] The age of the office is doubtful. Ricart says, "that there hath been alweyes Maires in this worshipfull toune seth the Conquest and byfore[4]"; and Mr. J. F. Nicholls adduces some evidence showing that one Robert Fitz-Nichol was mayor in 1200.[5] But a MS. Calendar, quoted by Seyer, states, that when

[1] *Rotuli Chartarum (Record Commission)*, 46, 56, 57, 65, 142.

[2] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 21. In commenting on this charter, Seyer (*Memoirs of Bristol*, ii, 56) says, that the appointment of a separate coroner for the town may be considered as the first step toward making it a separate county; and, he supposes, that before this the coroners for Gloucestershire and Somerset executed the duties of the office. But in this record we have conclusive proof that this was not so.

[3] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 26.

[4] Ricart's *Kalendar (Camden Society)*, 69.

[5] *The Ancient Charter Privileges of the Bristol Freemen*, in the *Transactions of the Bristol and Gloucestershire Archæological Society*, 1878–9, Part 1, 264.

Henry the Third came to Bristol in 1216 he permitted the town to choose a mayor, "and with him were chosen two grave, sad, worshipful men which were called *Prepositors*, there being neither Sheriffe nor Bayliffe."[1] But no charter exists to this effect, and, as no subsequent charter of confirmation quotes a grant of the kind, it is unlikely that the burgesses ever possessed such a deed. It is a fact that from 1217 downward there is an unbroken list of mayors. Certain entries in the Close Rolls[2] prove, however, that a Roger Cordewaner was mayor of Bristol in the 18th year of the reign of King John. This mayor was an influential person who had enjoyed the favour of the King since, at least, the year 1200.[3]

The Bailiffs were elected by the burgesses, but represented the King, and before entering on their office were presented to the King's justices to be approved.[4] Numerous entries in the Close Rolls show that from the 20th of July, 1204, letters were sent addressed to the bailiffs of Bristol (*ballivi de Bristoll*).[5] Some were also sent addressed to the bailiffs of the port of Bristol (*ballivi portus de Bristoll*).[6] Still, it

[1] Seyer, *Memoirs of Bristol*, ii, 7.

[2] vol. i, 281*b*, 283, 285, 286*b*.

[3] *Rotuli Chartarum (Record Commission)*, vol. i, pt. i, 61.

[4] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 656.

[5] vol. i, 3, 49*b*, 81, 105, 107, 222, 225*b*, 345*b*, 374.

[6] *Ibid.*, 197, 203*b*, 570, 571. *Rotuli Litterarum Patentium (Record Commission)*, 80.

would appear that these officers were the same, but that when orders were issued concerning maritime matters they were addressed by the latter title. The bailiffs were to the town what the sheriff was to the shire, and, so far as the town was concerned, as it were stood in the sheriff's shoes.[1] They were the officers who proved the privileges of the town,[2] and we learn from this record that they were present with the coroners at some preliminary judicial proceedings when certain Jews undertook to produce a felon's chattels and his wife.[3] The office was one of considerable importance, and although a city like Norwich until 1403 got on very well without a mayor, it had no less than four bailiffs managing its civic affairs.[4] They presided at the view of frank-pledge, each ward seemingly having its separate court.[5] The coroners were enjoined to watch their acts with special care.[6]

The Prepositors were royal officers acting as bailiffs for the King and guarding his interests, especially in matters of revenue.[7] They were distinct from the

[1] Round, *Geoffrey de Mandeville*, 110.

[2] *Somerset Pleas (Somerset Record Society)*, pl. 525.

[3] No. 29.

[4] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 657.

[5] Hudson, *Leet Jurisdiction in Norwich (Selden Society)*, Introd., xii–xxxiv.

[6] Green, *Town Life in the Fifteenth Century*, ii, 223.

[7] Brady, *Cities and Boroughs*, 28. Freeman, *Exeter*, 59. *Rotuli Litterarum Clausarum (Record Commission)*, i, 348.

bailiffs of the borough, but apparently worked side by side with them.[1] The office was one of great antiquity, Sewin having held it in the reign of Edward the Confessor.[2] It is significant that the *præpositus* is the only officer named in the charter of 1188.[3]

The *Barones*[4] were the aldermen of the wards,[5] the number of wards being five, called respectively, the Quarter of the Holy Trinity, the Quarter of the Blessed Mary in the borough, All Saints, Saint Ewen's, and Redcliff.[6] In the Charter of Henry the First to London the presidents of *socs* (an ancient name for the ward jurisdiction), are called *barons*. Although aldermen are not mentioned by name until 1199,[7] it is very probable that they are the *barons* of the early charter.[8] It is also tolerably certain that the *barones* and aldermen of Bristol are the same. The *Consuetudines ville Bristol*, A.D. 1344, record that no one could be elected to the office of mayor unless he had previously been an alderman.[9] In London

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 177*b*. A Close letter of 18th November, 1214, is addressed to the Prepositors *and* Bailiffs of Bristol.

[2] Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 195, 308.

[3] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 8.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 270*b*.

[5] Brady, *Cities and Boroughs*, Appx., 37. *Liber Albus*, 13.

[6] MS. *Great Red Book of Bristol*, fo. 3.

[7] *De Antiquis Legibus Liber (Camden Society)*, 2.

[8] Aungier, *Croniques de London (Camden Society)*, Introd., x, xi.

[9] *The Little Red Book of Bristol*, i, 24-44.

the *barons* elected a mayor from among themselves,[1] and there is little reason to doubt that the *barones* of Bristol followed the same practice.

The *Probi Homines*[2] were the most discreet, knowing, and best men of the wards,[3] but their duties do not here concern us, and to mention them must suffice.

The early history of the municipal magistracy is hidden in darkness, and the same may be said of the details of the civic government. Up to this time there was no charter or record defining any constitution for the borough, and no charter had expressly granted to the burgesses any power of legislation. But it is important to note that from the time of the first charter to Bristol the customs of the town had been confirmed, and no doubt local enactments were made defining and developing the ancient liberties.[4]

The Guild Merchant[5] had, in the course of a century, developed into a powerful commercial monopoly, but it is impossible to say, at this time, what part it took

[1] *Liber Albus*, 13, 120.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 116, 226*b*, 275, 391, 588, 588*b*.

[3] Brady, *Cities and Boroughs*, 38. Green, *Town Life in the Fifteenth Century*, ii, 249.

[4] The earliest recorded *consuetudines* are those of 1344, contained in *The Little Red Book of Bristol*, i, 24.

[5] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 9. *Rotuli Litterarum Clausarum (Record Commission)*, i, 345*b*.

in the government of the borough. With public justice and police it is almost certain that it had nothing to do.[1] Its object was to maintain the mercantile privileges granted to the town, and it was perhaps the body which acted and complained to the King when tolls were unlawfully taken by the officer of a rival town from the men of Bristol. Since 1155, the burgesses had enjoyed freedom from tolls throughout the King's dominions,[2] and so actively did the King support the privilege, that, when any person, in any other place, took toll from the men of Bristol, instead of causing them to trust to the delays and inconveniences of a suit, he empowered his *præpositus* to take from the delinquent a distress at Bristol, and thus force him to restore what he had wrongfully taken.[3]

Such was Bristol in 1221. Its palmy days of almost regal independence and splendour were before it.

The hundred of Swineshead, whose presentments were, by special favour, taken at Bristol instead of at Gloucester, offers an entity the very reverse of a chartered borough. It covered a considerable area,

[1] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 666.

[2] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 1. Hunt, *Bristol*, 71, *note*. The Prior of Bath, the men of Winchester, and the burgesses of Bruges and Gloucester, were free from toll in Bristol; *Rotuli Litterarum Clausarum (Record Commission)*, i, 3, 225*b*, 538*b*. *Calendarium Inquisitionum post Mortem sive Escaetarum (Record Commission)*, i, 42.

[3] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 7, 8.

and embraced the ancient manors of Bitton, Wapley, Winterbourne, Oldland, Hanham, Hambrook, Stoke Gifford, and Clifton.[1] A great part of the wood of Furches, afterwards known as Kingswood Forest, also lay within its borders. Barton Regis, which included the parishes of Mangotsfield, Stapleton and Saint George, did not answer as a separate hundred on this eyre, but evidently answered with the hundred of Swineshead.[2] The reason may be found in the fact that the manor of Barton was considered to lie within the manor of Swineshead.[3] The hundred had a court which, in the time of Henry the First, was held twelve times a year.[4] But in the reign of Henry the Second the intervals appear to have been fortnightly. So great a hardship did these frequent sittings become that an ordinance was passed in 1234 forbidding the court to sit oftener than once in three weeks.[5] Suit was a burden incumbent on land. The suitors were certain of the freeholders, but it cannot be said that all the freeholders were suitors.[6] The jurisdiction

[1] Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 309. Nicholls and Taylor, *Bristol, Past and Present*, i, 96.

[2] Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 199, 313. *Calendarium Inquisitionum post Mortem sive Escaetarum (Record Commission)*, i, 309.

[3] *Rotuli Hundredorum Hen. III. et Edw. I. (Record Commission)*, i, 175.

[4] *Leg. Henr.*, c. 7, § 4.

[5] Stubbs, *Constitutional History of England*, 4th Edit., ii, 287.

[6] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 540.

of the court extended to civil causes only. Its president was the bailiff. The hundred had communal duties and could be fined for neglecting them. The most important example was its liability for the murder fine *(murdrum)*, many instances of which are afforded by this roll.[1] Twice a year the sheriff made a progress through the hundred for the purpose of seeing that all the tithings were full and the men in frankpledge,[2] and also to enquire of robbers, murderers, and thieves, by the oaths of twelve lawful men of the hundred and four lawful men of each vill.[3] Minor offences were tried by the sheriff in his *tourn*, but the power of holding pleas of the Crown had been taken away from him by the 24th article of Magna Charta.[4]

About the commencement of July, 1221, a notable assemblage met together in the royal town of Bristol.[5] Of those present first in importance were six justices, Simon, Abbot of Reading, Randolf, Abbot of Evesham,

[1] No. 3, 5, 7, 8, 9, 41.

[2] *Leg. Henr.*, c. 8.

[3] *Assize of Clarendon*, art. 1. Maitland, *Select Pleas in Manorial Courts (Selden Society)*, Introd., xxvii–xxxviii.

[4] Magna Charta, however, did not expressly abolish the Sheriff's *tourn*, and we find that sometime between 1235 and 1242 two men were hanged for burglary and larceny by judgment of the hundred court of Cheddar; *Somerset Pleas (Somerset Record Society)*, pl. 785.

[5] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd., xviii; Essoins were taken at Gloucester on the 21st of June. The justices expected to be in Hereford by the 19th of July, and in the interval Bristol had to be visited. Pleas were taken there either in the later days of June, or, what is more probable, in the early days of July.

the great Martin Pateshull, Master Robert Lexington, Ralph Hareng, and the powerful baron, John of Monmouth.[1] Next in importance was Ralph Musard, an officer of great weight, sheriff of the county of Gloucester, a justice in this commission, but precluded by the Form of Proceeding on the Judicial Visitation of 1194[2] and the 24th article of Magna Charta from sitting as a justice in his own county. There, side by side, sat the Florentine constable of the Castle, the bailiffs, and Michael Bohulk, Thomas Mitchell, Roger Fellard, and William Taylor, the four coroners, all officers of the King and men of considerable influence. There waited the prior of Bath and Richard de Kaninges, clerk to the Bishop of Bath, to claim on the prelate's behalf the right to try in the bishop's court Christian John Russ, a priest, who had tested the effect of a flat hoe on the head of one of his parishioners.[3] There Gilbert of Clare, Earl of Gloucester, William, the Earl Marshal, the Lord Thomas of Berkeley, Adam Fitz-Nigel, Simon de Matresdon, Henry de Drois, and Hugh of Cuillardvill, the four coroners for the county of Gloucester, David, Abbot of Saint Augustine, the Prior of Saint James,

[1] Fifteen years later it was considered an outrage for an abbot to be put in a commission; *Letters of Bishop Grosseteste (Rolls Series)*, 105, 108.

[2] Stubbs, *Select Charters*, 8th Edit., 260.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 128.

Robert Holburst, the mayor, and John Oldeham and Henry Vynepeny, the prepositors of the borough, haply swelled the crowd of representatives of mediæval power. There William Raleigh, afterwards Bishop of Lincoln and the second greatest lawyer of the day, probably acted as clerk to Martin Pateshull, for his signature appears on a Warwickshire roll belonging to this eyre.[1] There the Knights Templars, with their chain mail, snowy vest, and red cross, adorned an already picturesque assembly. There knights and freeholders of bailiwicks, lawful men and reeves of townships, lawful burgesses of the boroughs of Bristol and Redcliff, stewards of manors, parish priests and representatives of the Jewry came at duty's call. And there were gathered together from all parts, a motley crowd of suspected persons, appellors, appellees, finders of dead bodies, pledges, grumbling merchants, artful vassals, and nondescripts. It was the holding of the general eyre convoked by writ of the 16th of May, 1221, issued to the said seven justices.[2]

At the head of the commission was Simon, tenth Abbot of Reading,[3] a man of strong determination and power; fearless in the face of the greatest danger;

[1] *Assize Roll* M 6 16 } 1.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476, 476*b*.

[3] *Ibid.*, 476.

ready at the command of the Holy Father to denounce a curse and excommunication against the King's enemies and so-called disturbers of the peace.[1] True, beyond doubt, otherwise Innocent the Third would have chosen another for such momentous work. Simon succeeded Helias as Abbot in 1212,[2] and two years later was sent by John on a special mission to France,[3] receiving the sum of forty pounds for his expenses[4]—a large sum in those days. But his great work was ahead. The times were teeming with mutation. Bold men were required to execute bold acts. The Church stooped to none. The days were the days of puissant archbishops and potent legates. But the Abbot's strength, after the meeting at Oxford, was little inferior to that of the mightiest. A warrant to hurl anathema on a national party is supreme, and that authority, Simon, together with Pandulf and the Bishop of Winchester, possessed.[5] Doubtless by character, faculty, and position, these men were the fittest of all to hold this power. But an abbot must play many parts if he wishes to bask in the sunshine of a King's

[1] Stubbs, *Constitutional History of England*, 4th Edit., ii, 7. Maurice, *Stephen Langton*, 224.

[2] Foss, *The Judges of England*, ii, 475.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 175.

[4] *Ibid.*, 175*b*.

[5] Stubbs, *Constitutional History of England*, 4th Edit., ii, 7. Rymer's *Fœdera* (London, 1704), i, 211, 212.

favour. As Simon served John, so was he to serve his successor. The new King, Henry the Third, in 1219, placed him in the commission of inquiry as to the forests, and many were the inquests held by him in Oxfordshire and Buckinghamshire.[1] But the sword was to hang on his hip. Devizes Castle was committed to his charge, and a dozen golden marks did he receive for the expenses of his knights and sergeants.[2] By 1221 the armour was flung off and the judicial robes again donned, and eight good marks drew he in advance for his expenses on this eyre.[3] And with this eyre his judicial functions ended. Then back to the Abbey he rode, and attended to his sacred duties and properties. A careful man of business and a thrifty one; mending his houses at Wichebury with the timber of twenty sturdy oaks, given him by the King, out of the New Forest.[4] But Simon could not mend himself so easily, and in 1226 the sheriffs of Berkshire and Herefordshire held for the King all the lands, things, and possessions in their bailiwicks, once the property of Simon, Abbot of Reading, deceased.[5]

The second name in the commission is that of

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 434*b*.
[2] *Ibid.*, 458.
[3] *Ibid.*, 458.
[4] *Ibid.*, 513*b*.
[5] *Ibid.*, ii, 99.

another abbot, Randolf, Abbot of Evesham,[1] a strict minded man and honest,[2] and certain to grow in favour with official persons. Formerly Prior of Worcester, he was marked by far-sighted Nicolas of Tusculum, the papal legate, for a higher post. The opportunity occurring, Nicolas recommended him for the abbacy of Evesham,[3] and four days later, on the 24th of January, 1214, the royal assent was given to the election.[4] The legate himself blessed him in Saint Mary's Abbey at York on the 9th March, and soon he was offered the bishopric of Worcester, but begged to be allowed to refuse the honour.[5] And so he stayed at Evesham and represented the Abbey in the famous Council of Lateran, held in 1216, whose decrees, it seems, abolished the system of Ordeals.[6] In 1221 Randolf received his first and only appointment as judge, and as we hear of no complaint, doubtless his duties were successfully performed.[7] For the future his work was with his monks, and amongst them he died on the 16th of January, 1229.[8]

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476.

[2] *Chronicon Abbatiæ Eveshamensis (Rolls Series)*, 255–264.

[3] *Ibid.*, 255, 256.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 162.

[5] *Chronicon Abbatiæ Eveshamensis (Rolls Series)*, 255, 256.

[6] *Ibid.*, 263*n*, 266. Stephen, *History of the Criminal Law*, i, 253.

[7] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476.

[8] *Chronicon Abbatiæ Eveshamensis (Rolls Series)*, 263, 17 Dec. (16 Kal. Jan.), 1229.

Martin Pateshull, the third judge,[1] was the greatest lawyer in the whole commission—nay, more, he was the greatest lawyer in England; a man whom Bracton delighted to worship, and whose works he studied because his ignorant contemporaries were misrepresenting the law; a man whom Bracton called a great man of the past, and whose judgments he referred to as the ancient judgments of the just,[2] high praise indeed, coming as it did from him who wrote the crown and flower of English mediæval jurisprudence.[3] In all probability Martin began his career as clerk to Simon Pateshull, and may well be the clerk Martin who accompanied Simon in the Cornish eyre of 1201.[4] John raised him to the Bench,[5] and held him in such esteem that in this monarch's days of darkest trouble letters of safe conduct were sent out for Martin to come to his sovereign.[6] But John was soon to be succeeded by the boy King, Henry the Third, and early in the new reign Martin received fresh commissions. Between 1217 and 1226 he visited, in a judicial capacity, almost every county in England. Before he sat in Bristol he had acted as a justice in Bucking-

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476.
[2] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 183.
[3] *Ibid.*, 206.
[4] *Select Pleas of the Crown (Selden Society)*, pl. 18.
[5] Bracton (Rolls Series), Twiss's Introd., vol. ii., p. xli.
[6] *Rotuli Litterarum Patentium (Record Commission)*, 142.

hamshire, Yorkshire, Northumberland, Hertfordshire, and Herefordshire.[1] Imbued with a fiery enthusiasm his life was spent in the saddle and on the bench. Scarcely a year passed without his name appearing in a commission. The King's enemies feared him. They knew that if they fell on evil days, and Martin tried them, justice would be done, no matter at what cost. A dangerous man to rebels this, and one that must be silenced. During Falkes de Breauté's outbreak in 1224, Braybrook, the judge, was captured and imprisoned.[2] Martin barely escaped.[3] But, undaunted, he sat at Dunstaple and convicted Falkes of thirty-five acts of disseisin.[4] What higher proof of his devotion to the law and his activity on its behalf can be given than the letter of a fellow justice appointed to go circuit with him, in which he prayed that he might be excused the office on the ground that Martin was strong, and in his labour so sedulous and practised, that all his fellows, especially W. de Ralegh and the writer, were overpowered by him, for every day he worked from sunrise until nightfall?[5] And for an iter

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 367*b*, 380*b*, 403*b*, 444*b*, 473*b*.

[2] Stubbs, *Constitutional History of England*, 4th Edit., ii, 35. Maitland, *Pleas of the Crown for the County of Gloucester*, Introd., x.

[3] Pauli, *Geschichte von England*, iii, 538–542. Foss, *The Judges of England*, ii, 439, qu. Roger of Wendover, iv, 94.

[4] *Annales Prioratus de Dunstaplia* in *Annales Monastici (Rolls Series)*, iii, 90.

[5] Shirley, *Royal Letters (Rolls Series)*, i, 342.

of such work forty marks seem a small sum.[1] Martin recked not that the surest way to shorten his days was to lengthen them. Did not a good record of judicial labour lead to canonries, deaneries, and even bishoprics?[2] And who more worthy than Martin? In 1227 he held benefices in Northumberland[3] and the archdeaconry of Norfolk.[4] Two years later he was made Dean of Saint Paul's, and as such died on the 14th of November, 1229.[5] So passed a great man, or as Matthew Paris has it: "*vir mirae prudentiae et legum terrae peritus.*"[6]

The fourth judge, John of Monmouth,[7] was a powerful baron, holding large estates in the counties of Gloucester, Hereford, Salop, and Monmouth.[8] He descended from William Fitz-Baderon, a person of importance, mentioned in Domesday Book as possessing lands in the hundred of Lydney.[9] Like many another, John knew the uncertainty of the King's temper, and

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 471*b*; Martin received this sum for his expenses on the eyre of 1221, an eyre which occupied over six months.

[2] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 205.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, ii, 203.

[4] Foss, *The Judges of England*, ii, 440.

[5] *Ibid.*, 440.

[6] Matthew Paris (Rolls Series), iii, 190.

[7] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476.

[8] *Ibid.*, 239*b*, 271, 280. *Rotuli Litterarum Patentium (Record Commission)*, 153*b*.

[9] Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 209.

for some offence, real or imaginary, was forced to give his son to his royal master as a security for his better behaviour.[1] But his disgrace was not to last for long, and once restored to favour gifts fell fast upon him. At the critical period of the Charter he stood by John, and in the February of 1215 was sent by the King on a confidential errand into the counties of Hereford, Salop, Stafford, Gloucester, Somerset, Dorset and Southampton, and also to the town of Bristol.[2] Now this mission was nothing more nor less than to explain the King's position to any powerful person he might enlist on the royal side. And we must believe he did his duty well, for a horse was the reward of his services.[3] But greater honours were in store. Very soon he was appointed custodian of the castles of Saint Briavels,[4] Bremble,[5] Grosmont,[6] Skenfreth, and Lantilio,[7] and keeper of the Forest of Dean,[8] the New Forest,[9] and the Forest of Clarendon.[10] The

[1] *Rotuli Litterarum Patentium (Record Commission)*, 87.

[2] *Ibid.*, 128, 128*b*.

[3] *Ibid.*, 137.

[4] *Ibid.*, 153*b*, 185.

[5] *Ibid.*, 157*b*.

[6] *Ibid.*, 160, 194*b*. *Rotuli Litterarum Clausarum (Record Commission)*, i, 239*b*.

[7] *Rotuli Litterarum Patentium (Record Commission)*, 194*b*.

[8] *Ibid.*, 185. *Rotuli Litterarum Clausarum (Record Commission)*, i, 343, 393*b*, 401*b*, 402, *sqq*.

[9] *Ibid.*, 405*b*, 469*b*.

[10] *Ibid.*, 638*b*.

manor of Newton[1] was bestowed upon him, as well as grants of land in Herefordshire and Shropshire.[2] Sufficient trusts surely. Still the crowning one was to come. King John made him one of the executors of his will.[3] John of Monmouth undoubtedly accompanied the King to Bristol in 1216, for we find an interesting writ issued at the time ordering Roger Cordewaner, the mayor, to give him a couple of casks of wine.[4] His first appearance as a judge dates from 1220, when Henry the Third commissioned him, with Martin Pateshull and two others, to deliver the gaol at Hereford.[5] His second appearance was on this eyre.[6] Subsequently he was appointed justice of the forest,[7] and forests and castles kept him well employed, many of the latter being situate on the border of turbulent Wales.[8] As missioner, castellan, forester, and judge, John was successful. As a soldier he was no mean adversary. In the rebellion of 1233 he supported the King, and in an encounter with the troops

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 261*b*.

[2] *Ibid.*, 271, 280.

[3] Stubbs, *Constitutional History of England*, 4th Edit., ii, 17.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 283. The corporation of Bristol had its wine cellars until the reconstruction of the corporate body under the Municipal Reform Act, 1835, after which time the stock of wines was sold by auction; Latimer, *Annals of Bristol, Nineteenth Century*, 183. Hunt, *Bristol*, 45.

[5] *Rotuli Litterarum Clausarum (Record Commission*, i, 437.

[6] *Ibid.*, 476.

[7] *Rotuli Litterarum Patentium*, 37, m. 2.

[8] *Rotuli Litterarum Clausarum (Record Commission)*, ii, 133*b*, 156, 198, 200. John of Monmouth acted on a judicial inquiry as late as 1227; *Ibid.*, 209.

of the Earl Marshal narrowly escaped with his life.[1] He took part in the Welsh wars[2] and died in 1248.[3]

Ralph Hareng, the fifth judge,[4] first came prominently into notice as steward to Thomas de S. Valerico.[5] Obsequious, wily, and selfish, he profited by the quarrels of the period, receiving in 1208, as a gift from the King, the churches of Chesterton and Mixbury which had been taken from his own son, Jordan, on the occasion of the interdict.[6] A man of the camp as well as of the manor, he was, in 1213, ordered to besiege the Earl of Losa in his castle.[7] In 1215 the shrievalties of Buckinghamshire and Bedfordshire fell to him, and during the next year he was engaged in special service for the King,[8] receiving as a reward gifts of land, wine, and money.[9] In 1218, he, together with Martin Pateshull and Robert Amauri, held an assize of novel disseisin relating to some lands in Buckinghamshire,[10] and during the next year he was sent into the counties of Oxford

[1] Foss, *The Judges of England*, ii, 411, qu. Roger of Wendover, iv, 279, 289.

[2] Rymer's *Fœdera* (London, 1704), i, 389, 399.

[3] *Excerpta è Rotulis Finium (Record Commission)*, ii, 41.

[4] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476.

[5] *Ibid.*, 82, 118, 136, 137, 138, 222, 281. *Rotuli Litterarum Patentium (Record Commission)*, 71.

[6] *Rotuli Litterarum Clausarum (Record Commission)*, i, 114.

[7] *Ibid.*, 134*b*.

[8] *Rotuli Litterarum Patentium (Record Commission)*, 146*b*, 192*b*, 193.

[9] *Rotuli Litterarum Clausarum (Record Commission)*, i, 294*b*, 363, 365.

[10] *Ibid.*, 367*b*.

and Buckingham with the Abbot of Reading to hold an inquiry as to the forests.[1] In 1220 he was put in the commission of the eyre for Hertfordshire,[2] and six months later was appointed on this eyre,[3] receiving twenty marks for his services.[4] Henry gave to him as freely as did John, and to maintain him in his service the King, in 1222, ordered his treasurer to hand him a share of one hundred and sixty marks.[5] Ten bucks and two does were also given him to place in his park at Westbury,[6] and twenty-four oaks went from Witlewood Forest to repair his church at Thorp.[7] In 1223 he sat with the Justiciar, Hubert de Burgh, and other judges, to try an action of deforcement between the Abbot of Heles and Stephen de Waresl.[8] In 1225 he was appointed custodian of the land belonging to the Earl of Dreus,[9] and in 1226 was made one of the collectors of the fifteenths for Bedfordshire and Buckinghamshire.[10] Up to his death in 1229[11] there are frequent records of royal bounty bestowed upon him.

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 434*b*
[2] *Ibid.*, 473*b*.
[3] *Ibid*, 476, 476*b*.
[4] *Ibid.*, 459*b*, 460.
[5] *Ibid.*, 489, 495.
[6] *Ibid.*, 519*b*.
[7] *Ibid.*, 520.
[8] *Ibid.*, ii, 209.
[9] *Ibid.*, 22.
[10] *Ibid.*, 147*b*.
[11] *Excerpta è Rotulis Finium (Record Commission)*, i, 194.

Ralph Musard, the sixth judge named in the commission, was sheriff of Gloucestershire, having been assigned that county on the 8th of July, 1215.[1] In conformity with the rule laid down in Magna Charta,[2] he was specially forbidden to sit in a judicial capacity within his own shire.[3] He was a strong adherent to John's cause, and received from the King numerous grants of money, lands, and fees from purprestures.[4] Similar favours continued to flow from the young King, Henry the Third,[5] and he was engaged in various undertakings for that monarch.[6] So trusted was he that Princess Elianor, the Beauty of Brittany, was placed in his keeping during a portion of the time she was a prisoner.[7] This unfortunate princess and her brother Arthur, Duke of Brittany, were taken by King John, in 1202, during the siege of Mirabel Castle in Poictou. Arthur is believed to have been murdered by his uncle, and contemporary historians relate that Elianor was imprisoned in Bristol Castle for forty years.[8] Here the chroniclers are

[1] *Rotuli Litterarum Patentium (Record Commission)*, 148*b*.

[2] Art. 24.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476.

[4] *Ibid.*, 265*b*, 274*b*, 279*b*, 282, 303*b*. *Rotuli Litterarum Patentium (Record Commission)*, 193*b*.

[5] *Rotuli Litterarum Clausarum (Record Commission)*, i, 303*b*, 342*b*.

[6] *Ibid.*, 386*b*.

[7] *Ibid.*, 546, 546*b*.

[8] *Ibid.*, Hardy's Introd., xxxv.

certainly at fault, for many entries in the Close Rolls show that from 1213 to 1221 Elianor was in Corfe Castle well looked after and enjoying many luxuries.[1] For instance, the Mayor of Winchester was ordered to take her, amongst other things, robes of dark green, a cap furred with miniver,[2] and a beautiful saddle with scarlet ornaments and gilded reins (*unam sellam pulcram cum sambuca de scarletta et lorrenniis deauratis*).[3] On the 7th of August, 1222, Ralph Musard, as sheriff of Gloucestershire, was commanded to cause necessaries to be provided for the princess and her two waiting maids who were staying by the King's orders in Gloucester Castle, and for Walter de S. Audoen, Richard de Landa, and Gilbert de Greinville, the keepers of the Princess, with their six horses and eight men, together with the domestic establishment of the same Elianor, as long as they stayed there by the King's orders; and the costs incurred were to be accounted to him at the Exchequer.[4] A week or so later the sheriffs of London were directed to let Ralph have five ounces of silk for the use of Elianor.[5] Now the domestic economy displayed by Ralph was

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 144*b*, 150*b*, 157, 168*b*, 466*b*, 483*b*.

[2] *Ibid.*, 144*b*.

[3] *Ibid.*, 150*b*.

[4] *Ibid.*, 507*b*.

[5] *Ibid.*, 508.

excellent, for he kept this lady and her large retinue for ten shillings a day, and received £117 for their expenses, from the eve of Saint Peter ad Vincula 6 Henry the Third, until the feast of Saint Benedict next before the annunciation of the Blessed Mary in the seventh year, both days inclusive.[1] Whilst at Gloucester Castle, Walter de S. Audoen was taken dangerously ill. The King dispatched Robert Lovel to assist in the guarding of Elianor, and Ralph Musard and the others assigned for her custody were commanded to admit him into the Castle and Tower so that he himself might have free ingress and egress to and from the Tower, but that his suite should remain without in the Castle.[2] At the same time, the King sent ten servants on horse and four cross-bowmen on foot for the further safeguard of the Castle.[3] From Gloucester Elianor was removed to Bristol, and was there on Henry the Third's visit in 1224.[4] Except for an inquiry that Ralph Musard and John of Monmouth held in Hereford in 1219, the former appears to have had no appointment as commissioner

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 538.

[2] For a very learned article on "Tower and Castle" see Round's *Geoffrey de Mandeville*, App. O, 328–346. Men spoke in those days of the Tower of Bristol as of the Tower of Gloucester; *Ibid.*, 336, qu. Hen. Hunt, 276, "[Rex] in *turri* de Bristou captivus ponitur . . . ." See also *Rotuli Litterarum Clausarum (Record Commission)*, i, 153, 281.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 546, 546*b*.

[4] Hunt, *Bristol*, 31.

prior to this eyre.[1] During 1226 and 1227 he sat as a justice itinerant in the counties of Warwick, Worcester, Hereford, Stafford, Salop, Oxford, Devon, Southampton and Berks.[2] As sheriff of Gloucestershire Ralph was thrown in continual contact with Bristol and its burgesses, and was no stranger to the town on the occasion of the eyre. He had succeeded Engelard of Cigogné in the shrievalty, and continued sheriff of the county until 1225.[3] There can be little doubt that his appointment was more popular than that of Gerard of Athée or Engelard, for although the plea rolls of this eyre for the county of Gloucester are full of extortions by Gerard, Gio of Chanceaux, and Engelard,[4] no complaint appears to have been made respecting Ralph, and in those days of gross corruption this fact may be taken as proof of the

[1] We must, however, suppose that Ralph was learned in the law, for his appointment as sheriff was subsequent to the signing of Magna Charta, article 45, of which had declared that no sheriffs should be appointed unless learned in the law of the realm and minded to observe it *(Nos non faciemus justiciarios, constabularios, vicecomites, vel ballivos, nisi de talibus qui sciant legem regni et eam bene velint observare)*.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, ii, 151*b*, 205*b*, 213.

[3] *Ibid.*, 57. Sir Robert Atkyns in his *Ancient and Present State of Gloucestershire*, 2nd Edit. (1768), p. 38, states that Ralph Musard was sheriff from 1213 to 1221. We can find no evidence to warrant such a conclusion. The Patent Rolls (148*b*) distinctly date his appointment as the 8th of July, 1215, and mention is made of him as sheriff certainly as late as 1225; *Rotuli Litterarum Clausarum (Record Commission)*, ii, 57.

[4] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 92, 93, 108, 154, 156, 171, 227, 245, 260, 364, 376, 378, 405, 439, 444, 482, 505.

strictest integrity. To what a pass the rapacity and illegal conduct of sheriffs, bailiffs, constables and coroners had reached, can easily be gathered by a perusal of some of the sections of the Great Charter.[1] Ralph appears to have died in 1230.[2]

The seventh and last judge named in the commission was Robert Lexington,[3] an ecclesiastic, who, in 1214, was presented by King John to a prebend at Southwell.[4] During the same year he acted as custos of the archbishopric of York.[5] For six years from that time the rolls are silent as to his doings, and when next his name appears it is with regard to a grant of estovers made to him in 1220.[6] Immediately afterwards he was engaged on a special mission at Newcastle-upon-Tyne,[7] and in the following year was sitting on this eyre. Thence the records are eloquent concerning him. Gifts of money were made to him,[8] Balsover Castle[9] and the castle and honour of Pec[10] were placed in his custody, and Dover Castle

[1] Arts. 24, 26, 28, 29, 30, 31, 36, 39, 40, 45, 48, 50.
[2] *Excerpta è Rotulis Finium (Record Commission)*, i, 43, 198, 203.
[3] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476.
[4] *Rotuli Litterarum Patentium (Record Commission)*, 115*b*; 25th May, 1214.
[5] *Rotuli Litterarum Clausarum (Record Commission)*, i, 208.
[6] *Ibid.*, 421*b*.
[7] *Ibid.*, 439*b*, 442*b*, 473*b*.
[8] *Ibid.*, 551, 576*b*.
[9] *Ibid.*, ii, 6*b*.
[10] *Ibid.*, i, 594, 611, 611*b*, 618*b*, 635*b*, 636*b*; ii, 35, 43*b*, 44.

owed much to his efforts.[1] In 1225 he sat as a justice in the counties of Essex, Hereford, Nottingham, Derby, Lincoln, York, Northampton, Cumberland, and Westmoreland,[2] and subsequent entries of him so acting extend up to 1243.[3] Not content with working hard as a judge six days in the week, he must needs go and sit so often on the seventh day that the matter became a grave scandal.[4] But he acted thus not without precedent. His illustrious contemporary, Martin Pateshull, did the same thing.[5] Evidently the campaign of the Abbot of Flaye, on the observance of the Lord's Day, had not proved too fruitful.[6] When the King, in 1240, sent justices itinerant throughout all England, under the pretence of redressing grievances, but with the real object of extorting money from the people, Robert was placed at the head of those assigned for the northern counties.[7] It is not only as a lawyer and ecclesiastic this judge is known, for he added to his other duties that of a military leader. Besides Pec and Balsover Castles, he had, at one time, the custody of the castle

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 616, 641.
[2] *Ibid.*, ii, 76*b*, 77, 77*b*.
[3] *Excerpta è Rotulis Finium (Record Commission)*, i, 348.
[4] *Letters of Bishop Grosseteste (Rolls Series)*, 266.
[5] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd., xii.
[6] *The Annals of Roger de Hoveden (Bohn's Edition)*, ii, 526.
[7] Foss, *Biographia Juridica*, 407*b*.

of Oxford. When William of Aumâle was in rebellion, Robert was given an important military command, and there is a letter from him to Hubert de Burgh containing details of his preparations made to oppose the rebel.[1] On his death, in 1250, his brother, John, succeeded as heir to all his property,[2] and it was this brother who sullied the traditions of the bench by his action in respect to the alleged martyrdom of little Saint Hugh of Lincoln.[3]

These seven justices made up a commission which for strength and conspicuous ability it would have been difficult to equal. They were instructed to open the eyre at Worcester on the day after Trinity Sunday,[4] and the form of oath to be taken and the Articles were committed to the care of Martin Pateshull.[5] Writs were issued to the sheriffs of the counties of Worcester, Gloucester, Hereford, Warwick, Leicester, Stafford, Salop, Wilts and Cornwall, ordering each to summon by good summoners all Archbishops, Bishops, Abbots, Priors, Earls, and Barons, knights and free tenants of the whole of his bailiwick, and from every township four lawful men and the reeve,

[1] *4th Report Public Records*, App. ii, 157.

[2] *Excerpta è Rotulis Finium (Record Commission)*, i, 56.

[3] Walter Rye, *Persecutions of Jews (Anglo-Jewish Historical Exhibition Papers)*, 160, *seq.*

[4] 7th of June, 1221.

[5] *Rotuli Litterarum Clausarum (Record Commission)*, i, 476*b*.

and from every borough twelve lawful burgesses throughout the whole of his bailiwick, and everyone else in his bailiwick who was accustomed and ought to come before the justices itinerant, to be before the King's justices, namely the Abbot of Reading, the Abbot of Evesham, Martin Pateshull, John of Monmouth, and their fellows on the day following Trinity Sunday, or such other days as might be appointed, at the respective county towns to hear and do the King's bidding. Each sheriff was also directed to cause to come before the said justices all pleas of the Crown that had not yet been pleaded, and which had arisen subsequent to the last assize in those parts before the justices itinerant in the time of the lord King John, the then King's father, and all attachments regarding such pleas and all the assizes and pleas that were entered for the first assize before the justices, together with the writs of assize and pleas, so that no assize or plea might stand over by default of the sheriff or his summons. And the sheriff had to cause to be proclaimed and known throughout his whole bailiwick that all assizes and pleas which had been adjourned and unpunished before the justices at Westminster, should then be before the itinerant justices in the same state as they were in when the King commanded them to stand over at Westminster. Moreover

the sheriff was to summon by good summoners all who had served as sheriffs since the justices itinerant were last in those parts, to be there before the said justices with the writs of assizes and pleas which they received during office and to answer for their time as answer should be made before itinerant justices. Lastly each sheriff had to have with him the summons and the writ.[1]

From this it will be seen that the commission was of the very highest rank, being, in fact, for

[1] The following is a copy of the writ, issued to the sheriff of Worcester, which appears on the Close Rolls (i, 476*b*). In the original nearly every word is abbreviated. An endeavour is here made to write out in full every such abbreviated word :—

"Rex Vicecomiti Wigorni, salutem. Summone per bonos summonitores omnes Archiepiscopos, Episcopos, Abbates, Priores, Comites et Barones, milites et libere tenentes, de tota Ballia tua, et de qualibet villa quatuor legales homines et prepositum, et de quolibet burgo duodecim legales burgenses per totam Balliam tuam, et omnes alios de Ballia tua qui coram Justiciariis itinerantibus venire solent et debent, quod sint coram Justiciariis nostris, videlicet, Abbate de Radinge, Abbate de Evesham, Martinus de Pateshull, Johannes de Monemue, et sociis suis in crastino Sanctae Trinitatis apud Wigorniam audituri et facturi praeceptum nostrum. Facias etiam venire tunc coram eisdem omnia placita coronae quae placitata non sunt, et quae emerserunt postquam assisam ultimo fuit in partibus illis coram Justitiariis itinerantibus tempore domini Johannis Regis patris nostris, et omnia attachiamenta ad placita illa pertinentia, et omnes assisas et omnia placita quae posita sunt ad primam assizam coram Justitiariis, cum brevibus assisarum et placitorum. Ita quod assisae et omnia placita pro defectu tui vel summonitionis tuae non remaneant. Faciatis etiam clamari et sciri per totam Balliam tuam quod omnes assisae et omnia placita quae fuerunt atterminata et non finita coram Justitiariis nostris apud Westmonasterium, tunc sint coram praefatis Justitiariis nostris in eodem statu in quo remanserunt per praeceptum nostrum apud Westmonasterium. Summone etiam per bonos summonitores omnes illos qui Vicecomites fuerunt post ultimam itinerationem Justitiariorum in partibis illis, quod tunc sint ibidem coram praefatis Justitiariis cum brevibus de assisis et placitis quae tempore suo receperunt, et ad respondendum de tempore suo, sicut responderi debet coram Justitiariis itinerantibus, et habeas ibi summonitores et hoc breve."

an *iter ad omnia placita.* Such an eyre had the effect of stopping in the Bench all the business of the counties for which the eyre was announced, and litigants who had been warned to appear before the justices at Westminster had now to appear before the justices in eyre in their respective counties.

The Articles of the Eyre (*Capitula Itineris*) that Martin Pateshull was entrusted with are not recorded, but the answers of the jurors clearly indicate their tenor. Hoveden gives two sets, one for 1194,[1] and the other for 1198,[2] which show the matters inquired into at the close of the twelfth century. The Articles of 1227, for an eyre in the Cinque Ports, are on the Close Rolls, and are also given by Bracton.[3] Those for the London eyre of 1244 are in the Guildhall records.[4] A study of these documents shows that as time went on the list of interrogatories became longer and longer. Information was asked for respecting felonies, debts due to the King, wardships, escheats, encroachments, weights and measures, treasures-trove, chattels of Jews who had been slain, fugitives, new customs, and divers other things.

[1] *Chronica Magistri Rogeri de Houedene (Rolls Series)*, iii, 262-267. Stubbs, *Select Charters*, 8th Edit., 259.

[2] *Chronica Magistri Rogeri de Houedene (Rolls Series)*, iv, 61.

[3] *Rotuli Litterarum Clausarum (Record Commission)*, ii, 213. Bracton (Rolls Series), ii, 252.

[4] *Munimenta Gildhallæ Londoniensis (Rolls Series)*, i, 79. *Liber Albus*, 69-71.

A copy of the oath which the justices were to take is not extant. No doubt it was to the effect that they were to do justice to rich and poor alike, to act according to the Articles, and to serve the King's interests.[1]

The pleas for Bristol were taken at Bristol, and, as we have seen, so also were those for the hundred of Swineshead. But Bristol was not the county town, and the burgesses had first to appear before the justices at Gloucester, in accordance with the terms of the writ issued to the sheriff of the county. Indeed the whole county had there to come before them, that is, all the suitors of the county court who had not sent excuse or had failed to appear. We have no sure knowledge as to why Bristol was especially visited by the justices. It is true that no burgess could be called upon to plead or be impleaded out of the town in any pleas except pleas relating to foreign tenures which did not belong to the hundred of the town.[2] But this exemption did not extend to pleas of the Crown. There must however have been good reason for the judges making the journey. A mere question of convenience will not account for it. As a matter of fact they commenced

[1] Bracton (Rolls Series), ii, 185.

[2] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 6.

the eyre at Worcester, and from there went to Gloucester, then on to Bristol. They next proceeded to Hereford, and afterwards visited in turn Worcester, Warwick, Leicester, and Shrewsbury.[1] Probably the true reason of the Bristol sitting is that civil and criminal business were heard at the same time, and as civil pleas had to be taken within the borough walls it was found expedient to then and there deal with the pleas of the Crown.[2]

It would be interesting to know exactly where the judges sat. Being summer time it may reasonably be supposed it was in the open air at the High Cross.[3] If not there, then certainly the meeting place was in the Common Hall.[4]

At the opening of the eyre the writ was read. Martin Pateshull stated the cause of their coming and its advantage. Then all the justices went to a secret place and called to them some four, or six, or more, *busones*[5] or leading men of the county, and conferred

[1] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd., xviii.

[2] Bracton's *Note Book*, i, 17. Bracton took Devonshire Assizes in seven different towns. But a commission for an assize was a very different thing to a commission for an eyre.

[3] Pleas were heard at the cross of Ripon in 1231; at the cross of the Strand, London, in 1268; and at the bridge of Amot, Westmoreland, in 1295; *Assize Rolls*, Nos. 1043, 1201, and 1306, m. 11.

[4] Assizes were taken there in May, 1271; *Assize Roll*, No. 160.

[5] There is nothing to show who these magnates were beyond that they were called *busones*. Some critics consider that Bracton used the word in error for *barones*, but this can hardly be, for a record of John's reign is extant which refers to the *buzones* of Gloucestershire; *Abbreviatio Placitorum (Record Commission)*, 85.

with them respecting the keeping of the King's peace. They next explained that all persons over fifteen years of age should be sworn not to harbour outlaws or felons, and if they knew of any such they were to cause them to be arrested, and give information to the sheriff and bailiffs. When they heard the hue and cry they were to join in it. They must swear to arrest anyone coming into the town to buy food for malefactors, and if they received a stranger into their house by night, they ought not to allow him to depart before daylight, and then only in the presence of neighbours.[1]

Subsequently the jurors for the various hundreds and other places were chosen and sworn. How this was done is shown by the Articles of the Eyre for 1194.[2] In the first place four knights of the whole county took the oath. Afterwards these four elected two knights from every hundred or wapentake, who, in their turn having been sworn, elected ten knights from every hundred and wapentake. If there were insufficient knights the number was made up of lawful freeholders, and the twelve together answered the Articles of the Eyre. This was nothing more nor less than the election of a grand jury,[3] although it is an anachronism to call

[1] Bracton (Rolls Series), ii, 234–239.

[2] *Chronica Magistri Rogeri de Houedene (Rolls Series)*, iii, 263.

[3] Stubbs, *Select Charters*, 8th Edit., 258.

it by such a name, for the petty jury was not yet established. The presenting jurors at this stage neither tried cases nor gave evidence; they were simply the mouth-pieces for common report. The names of the hundredors were submitted to the justices, and each was duly sworn, the form of oath being as follows:—"Hear this ye justices that I will faithfully perform that which ye order me to perform on behalf of our lord the King, and for no one will I do otherwise, but will I act according to my ability So help me God, and these holy Gospels." This having in its entirety been administered to the first hundredor, the others severally declared that the oath the first juror had taken they on their part would faithfully keep. Then the Articles of the Eyre were handed to them, and a certain time was given for them to prepare their answers. Meanwhile they were to cause to be arrested any persons of evil repute, or if this were impossible, to give their names to the justices.[1]

The time allowed for the preparation of the answers appears to have varied. Three of the Gloucestershire hundreds had a week or more.[2] And such time was not too much to collect information respecting everything that had happened since the previous eyre, held,

[1] Bracton (Rolls Series), ii, 234–241.

[2] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd., xxvi.

probably, seventeen years before. Exactness was indispensable, for did the jurors make a false presentment,[1] or a false statement,[2] or present a plea that was not a plea of the Crown,[3] or answer badly,[4] they were amerced. Did they present no finder of a dead body,[5] or falsely present one;[6] did they conceal chattels,[7] or a death,[8] or a burglary,[9] or a breach of the Assize of Wine,[10] or an appeal;[11] did they falsely present Englishry,[12] or fail to present an attachment,[13] or conceal anything,[14] or make a foolish presentment *(stulta presentacione)*,[15] or omit to present outlawry,[16] or even make an honest mistake,[17] they were amerced.

The answers of the jurors were subject to strict

[1] *Somerset Pleas (Somerset Record Society)*, pl. 171*a*, 771, 906, 1022, 1062, 1162, 1196, 1246.

[2] *Ibid.*, pl. 394*g*, 1101. *Abbreviatio Placitorum (Record Commission)*, 180, 189.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 68.

[4] *Ibid.*, pl. 44.

[5] *Somerset Pleas (Somerset Record Society)*, pl. 752, 793, 916, 921, 1179.

[6] *Ibid.*, pl. 891, 1142, 1155, 1169.

[7] *Ibid.*, pl. 757.

[8] *Ibid.*, pl. 766, 1212.

[9] *Ibid.*, pl. 781.

[10] *Ibid.*, pl. 790.

[11] *Abbreviatio Placitorum (Record Commission)*, 17*b*.

[12] *Somerset Pleas (Somerset Record Society)*, pl. 880, 1215.

[13] *Ibid.*, pl. 809, 1064, 1144, 1234.

[14] *Ibid.*, pl. 1071, 1153, 1158, 1167. *Abbreviatio Placitorum (Record Commission)*, 18.

[15] *Somerset Pleas (Somerset Record Society)*, pl. 1134.

[16] *Ibid.*, pl. 1217.

[17] *Ibid.*, pl. 930.

scrutiny by the justices, and the coroners' rolls and the sheriffs' rolls were often appealed to in cases of doubt. When such took place the coroners' rolls almost always prevailed, even the county being seldom able to contradict them.[1]

It is by no means certain that in this eyre the jurors gave their answers to the Articles in writing. An entry however in the Gloucestershire eyre roll for 1221, relating to the hundred of Blidesloe, is some slight evidence that they did.[2] The roll for Somerset of the eyre held in the year 1242, has entries alluding to the jurors' presentment roll,[3] and there is certainly one entry referring to a written verdict.[4] Perhaps, however, the twenty-one years that elapsed between

[1] *Somerset Pleas (Somerset Record Society)*, pl. 1196, *note* 1. *Select Pleas of the Crown (Selden Society)*, pl. 38; In the Lincolnshire eyre of 1202, the jurors for the wapentake of Graffoe made certain statements, and the coroners by their rolls testified the same. But the county recorded otherwise. It was then declared that the county could not be heard to contradict the coroners *(non potuit comitatus contradicere coronatoribus)*. In the Gloucestershire eyre of 1221, the county contradicted the coroners, and the judges believed the county rather than the coroners' rolls; Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 396. Bracton appears to favour the coroners' rolls; Bracton (Rolls Series), ii, 430.

[2] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 357; "Loquendum de juratoribus qui nesciverunt aliquid respondere de Hundredo suo et veredictum suum ei committitur ut sibi provideant." The words '*veredictum suum ei committitur*,' at least suggest that the answers to the articles were in writing. The following sentence in the Staffordshire eyre roll for 1203, also appears to show that sometimes the answers were written:—" . . . et xij. juratores dicunt in veredicto suo ut *scriptum* eorum testatur . . . "; *Select Pleas of the Crown (Selden Society)*, pl. 62.

[3] *Somerset Pleas (Somerset Record Society)*, pl. 796, 916, 1042, 1115.

[4] *Ibid.*, pl. 950.

the Gloucestershire eyre of 1221 and the Somerset eyre of 1242 had established the practice. Even if the answers were written it is also certain that an oral reply had to be given to every article, and did the oral reply differ from the written answer it resulted in an amercement.[1]

Each justice, or at any rate, each permanent justice, kept a record of the proceedings, and an omission on this score called forth a severe rebuke.[2]

We have now arrived at that point where the substance of the roll can be shortly studied, and few though the entries be contained upon it, they nevertheless give satisfactory illustrations of the crimes and criminal process of the early part of the thirteenth century.

The doctrine of the King's peace was the basis of criminal procedure. At the period with which we are dealing, breaches of the King's peace and pleas of the Crown had practically become co-extensive. On the King's accession general proclamation of his peace was made, and so much importance was attached to the ceremonial that crimes committed between the date of the death of a monarch and the accession of

[1] *Select Pleas of the Crown (Selden Society)*, pl. 62, 71. *Somerset Pleas (Somerset Record Society)*, pl. 950.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 451.

his successor were unpunishable in the Crown courts.[1] The peace was not of the Crown and perpetual, but of the individual King, and when, for instance, Henry the First, Henry the Second, and Richard the First, died, the peace died with them.[2] This inconvenience became flagrant, for the successor of each of these Kings was in France at the time of the death of his predecessor.[3] Not until the demise of Henry the Third was definite action taken to render the King's peace permanent.[4] Therefore we know that the roll is of a time prior to the King's peace becoming a common right. Local officers of justice were not yet King's ministers, and local interests and jealousies might still circumvent the efforts of the Crown to redress grievances.[5]

According to Glanvill, in the reign of Henry the Second the pleas of the Crown included treason, homicide, arson, robbery, rape, crimen falsi, "et si quæ alia sunt similia; quæ scilicet crimina ultimo puniuntur supplicio aut membrorum truncatione." Pleas relating to theft, frays, strokes, and wounds

[1] Palgrave, *Commonwealth*, i, 285.

[2] *Select Pleas of the Crown (Selden Society)*, pl. 115.

[3] Stubbs, *Select Charters*, 8th Edit., 447. *Select Pleas of the Crown (Selden Society)*, pl. 84.

[4] Stubbs, *Select Charters*, 8th Edit., 447–448. Pollock, *Oxford Lectures, The King's Peace*, 87.

[5] *Ibid.*, 88.

belonged to the sheriff.[1] The Assize of Clarendon, A.D. 1166, extended the pleas of the Crown to theft, and the harbouring of robbers, murderers, or thieves.[2] The Assize of Northampton, A.D. 1176, still further limited the pleas of the sheriff, and implied that all serious offences were to be tried by the justices.[3] Notwithstanding these enactments the sheriff's peace continued an extensive actuality. In 1202 an appeal of robbery came before the justices at Lincoln, but on the county reporting that the culprits had been appealed, not of the King's peace, but of the sheriff's peace, and that the suit was in the county court, they refused to have anything more to do with it, except to amerce the jurors for making a wrong presentment.[4]

The 24th article of Magna Charta decreed that no sheriff, constable, coroners nor bailiffs of the King should hold pleas of the Crown, (*nullus vicecomes, constabularius, coronatores, vel alii ballivi nostri, teneant placita coronae nostrae*).[5] There is nothing to show exactly what the *placita coronae* were in 1215, but they undoubtedly represented serious crimes, and

[1] Stephen, *History of the Criminal Law*, i, 82, qu. Glanvill, p. 1.
[2] Stubbs, *Select Charters*, 8th Edit., 143.
[3] *Ibid.*, 150.
[4] *Select Pleas of the Crown (Selden Society)*, pl. 21.
[5] Stubbs, *Select Charters*, 8th Edit., 300.

probably differed very little from those enumerated by Glanvill.

Such of the crimes as might be prosecuted by an appeal, and for which the criminal's lands were forfeited to his lord or to the King, and his chattels taken, or for which he lost life or member, or was outlawed, were called felonies.[1] Misdemeanours, such as were subsequently known under a fully developed common law, were practically ignored by the justices of Henry the Third's reign, and on the eyre rolls of that period may be said not to appear.[2]

Homicide and rape are the crimes that here pass before us. The former is the only one that need be considered. In some few cases homicide was held to be justifiable, and when such happened the slayer suffered no punishment. Neither did he where death was caused by misadventure or in self defence. Every other case of homicide, that is, that which was neither justifiable nor excusable, was felonious. The difference between murder and manslaughter was then unknown.[3] In Glanvill's day secret homicide, which is *murdrum*, had to be distinguished from *homicidium*, but the distinction soon

[1] Pollock and Maitland, *History of English Law*, 2nd Edit., ii, 466.

[2] *Ibid.*, 522.

[3] *Ibid.*, 485.

died away.[1] The term *murdrum* however survived as the name of the fine paid by the hundred when a person was slain and the slayer not produced.

The law presumed that everyone killed was a foreigner unless his English birth was proved. Possibly the origin of the doctrine is to be found in the statutes of William the Conqueror, which decreed that all men whom he brought with him or who had followed him should be in his peace. And if one of them were slain the lord of his murderer was to seize the slayer. But if he could not do so then the lord was to pay forty-six marks of silver as long as his possessions held out, and on their exhaustion the hundred in which the killing took place was to pay in common the balance owing.[2]

The presentment of Englishry (*Englescheria*), that is proving the slain to be an Englishman by birth, was at first one of the few formal badges of distinction between the conquering and conquered race. Its practical need could not have lasted long, for at the end of the twelfth century it was impossible, except in the very highest or very lowest ranks, to distinguish Norman from Englishman. But the custom of presenting Englishry went on years after it had

[1] Glanvill, Lib. xiv, c. 3; *Dialogus de Scaccario*, Lib. i, c. x.

[2] Stubbs, *Select Charters*, 8th Edit., 84.

lost its meaning.[1] We shall meet with several instances.[2] Under the Bristol pleas it will be noticed that no presentment of Englishry was ever made. The reason is that by the charter of 1188 the town was exempt from *murdra*.[3] That part of Gloucestershire west of the Severn and the covert of Malvern Forest were also exempt, but Swineshead enjoyed no such immunity.[4] Different counties had different ways of presenting Englishry.[5] In Gloucestershire proof had to be given by two males on the father's side, and one male on the mother's side.[6] Women were in no case admitted.[7] Proof was given before the coroners in the county court or in the hundred court.[8] It was again given before the justices in eyre, when, if the justices were satisfied that Englishry had been properly presented, nothing more was to be done (*Englescheria presentata est et ideo*

[1] Freeman, *William the Conqueror*, 128.

[2] No. 2, 3, 4, 7, 8, 9, 10.

[3] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 6.

[4] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 98, 105. *Select Pleas of the Crown (Selden Society)*, pl. 131.

[5] Examples of the manner of presenting Englishry by different counties taken from eyre rolls principally of the reign of Henry the Third, are given by Mr. Chadwyck-Healey in *Somerset Pleas (Somerset Record Society)*, Appx. B, lxxvii-lxxx.

[6] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 1, "Et sciendum quod in hoc comitatu debet Englescheria presentari per duos ex parte patris et per unum ex parte matris."

[7] *Ibid.*, pl. 119:—"Et comitatus recordatur quod Englescheria non debet presentari per feminam."

[8] No. 3. Gross, *Select Coroners' Rolls (Selden Society)*, 4, 13, 26, 29, 82.

nichil), and the hundred was relieved of the murder fine (*murdrum*).[1] But where Englishry was not presented, the position of the hundred became less enviable, and in this eyre Swineshead was amerced to the amount of three marks.[2] At this time accidental death did not in Gloucestershire render the hundred liable for the murder fine, although such custom apparently established itself afterwards.[3] The instance on the roll of a *murdrum* in a case of death by misadventure where Englishry was not presented must be a blunder on the part of the clerks.[4] That the murder fine was exacted is no doubt true enough, but under no circumstances could the judgment have been *infortunium*. However this error is not singular.[5]

[1] No. 2, 4, 9, 10.

[2] No. 3, 7, 8, 9, 41.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, Introd. xxx, pl. 92, 93, 171; Clarke's *Fleta*, 70. The eyre rolls of the 10th year of Richard I. for Hertford, Essex, and Middlesex contain the presentments of juries relating to deaths by cold and starvation and accident, and in all these cases the *murdra* were exacted. "Since the hundred"; says Palgrave, in his Introduction to the Curia Regis Rolls; "was thus subjected to a mulct, if the man died for want of the necessaries of life, may it not be inferred that the inhabitants were bound to provide these necessaries—food and raiment:—and that consequently the principle of a legal provision for the poor was recognised by the common law?" *Rotuli Curiæ Regis (Record Commission)*, Introd., xxxiii–xxxv. Fines in cases of accidental death were abolished by The Provisions of the Barons, Westminster, A.D. 1259, art. 22; Stubbs, *Select Charters*, 8th Edit., 405.

[4] No. 7.

[5] No. 28. Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 332, 352.

The criminal law extended to all subjects. Not only was a man responsible for his own acts, but he was also liable for the acts of animals, and inanimate things belonging to him.

Although everyone was punishable for committing any of the crimes we have considered, everyone was not liable to be dealt with for the same in the King's courts. One of the most notable exceptions was that of the ordained clerk. This record contains one instance of a crime being committed by such a person.[1] Now an ordained clerk who had committed a felony stood in an entirely different position to a layman who had perpetrated a similar crime. Indeed, above all, he had eminent opportunities for a criminal way of life; for he was privileged, except in very rare instances, to be plucked from the rude hands of secular justice, and tried by a tribunal of his own. But before he got to that court a good deal of circumgyration went on.[2] Supposing a priest committed a murder, if he did not flee, as in the case before us, he was arrested by the sheriff. Then, likely enough, the bishop demanded him, and on the county agreeing to give him up, the prelate undertook in full county court to have him before the justices under a penalty of one

[1] No. 23.

[2] For two cases of clerics dealt with in the secular court, see *Northumberland Assize Rolls (Surtees Society)*, 316, 346.

hundred pounds (*cepit in manum coram pleno comitatu habendi eum coram justiciariis sub pene centum marcarum*).[1] Rather than run any risk of losing his money the bishop usually locked his man up in his own prison until the justices came, when the wretched clerk was brought before them and either indicted or appealed.[2] Now was the chance for the priest. He told the justices he was, perhaps, a sub-deacon, and the official of the bishop said he was a sub-deacon, that he was ordained by the Archbishop of Canterbury, and wound up by claiming cognizance for his lord's court.[3] If the claim were allowed, the clerk was handed over to the bishop's jurisdiction, no inquiry being made by the justices as to his guilt or innocence.[4] But the clerk whose acquaintance we make, did not wait for all these steps to be taken. Having killed a certain woman, he shook the dust of the town from off his feet, and Bristol knew him

[1] *Select Pleas of the Crown (Selden Society)*, pl. 160.

[2] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 441. "In the middle of the thirteenth century it is matter of complaint among the clergy that owing to this procedure clerks may languish for five or six years in the episcopal gaol without being brought to trial." Cf. Grosseteste's protest *Ann. Burton*, 424; Mat. Par. *Chron. Maj.* vi, 355-6; *Ann. Burton*, 417; Johnson, *Canons*, ii, 193; *Court Baron (Selden Society)*, 19; *Select Pleas of the Crown (Selden Society)*, pl. 160.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 128. *Select Pleas of the Crown (Selden Society)*, pl. 123.

[4] *Ibid.*, pl. 49, 117, 123, 140, 160, 189, 197. For other cases of clerical privilege see Maitland's *Pleas of the Crown for the County of Gloucester*, pl. 128, 168, 181, 259, 294; Smyth, *Lives of the Berkeleys*, i, 111.

no more. Such unclerical conduct led to his being exacted and outlawed. Well was it that he had no chattels, otherwise they would have become to him nothing more than a memory.[1]

Perhaps the most interesting body of people to whom the ordinary methods of criminal procedure did not apply were the Jews. The entries here relating to them are interesting and deserve consideration. Under the Normans and Angevins these people could own nothing, for, as Bracton puts it, "whatever they acquire, they acquire, not for themselves but for the King; for the Jews live not for themselves, but for others, and so they acquire for others, and not for themselves."[2] But save the King, they were free as regards all men. They became the financiers of the kingdom, great and small borrowing from them. Government regulations were framed for this money lending, because, firstly, whatever was owed to a Jew was owed to the king;

[1] No. 23.

[2] Bracton, f. 386*b*: "Judæus vero, nihil proprium habere potest, quia quicquid acquirit non sibi acquirit sed regi, quia non vivunt sibi ipsis sed alius, et sic aliis acquirunt et non sibi ipsis." The authority of this passage was called in question by Webb (P. C. Webb's *Question whether a Jew . . . was . . . a Person capable to hold Lands, London*, 1753 p. 34*n*), and a MS. note on the same page in the copy in the Bodleian Library tells us that the words are not in either of the three MSS. in that Library. On the other hand, Caley (in *Archæologia*, viii, 398), writes that though only three of the eight MSS. in the British Museum contain this passage, yet these three are much the most ancient. Sir Travers Twiss in his edition of Bracton (Rolls Series), vol. vi, p. xxv, expresses it as his opinion that there is no difficulty in supposing that this passage is also part of the original text of Bracton.

secondly, English tribunals were hardly to be trusted with their affairs; and, thirdly, the Jewish *gage* was a novel institution.[1] An edict was therefore issued in 1194[2] ordering all debts and gages of the Jews to be registered. Six or seven places were named in which alone such contracts could be made, and these had to be completed in the presence of two Christian lawyers (*legales Christiani*), two Jewish lawyers (*legales Judaei*), two registrars (*legales scriptores*), and two clerks (*clerici*). Each chirograph was divided into two parts, the one signed by the debtor being retained by the Jewish creditor, the other being placed in the *arca communis*. This *arca* possessed three locks, the key of the first being kept by the two Christian lawyers, that of the second by the two Jewish lawyers, and that of the third by the two clerks. Soon afterwards the Exchequer of the Jews was formed for the management of their business.[3] To this court all civil and criminal actions in which a Jew was concerned were supposed to be relegated. But with regard to criminal cases it is clear that for some years the justices of the Jews had no exclusive jurisdiction as against the justices in eyre. An appeal

[1] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 469.

[2] Stubbs, *Select Charters*, 8th Edit., *Capitula de Judaeis*, 262–3.

[3] Public Record Office, *Pipe Roll*, 10 *Rich. I.*, rot. 8, Roteland; qu. by Gross in *Publications of the Anglo-Jewish Historical Exhibition*, i, 174, 5*n*.

of murder involving a Jew was tried before the justices on the Bedfordshire eyre in 1202, and two more appeals of murder in which Jews were implicated are among the Crown pleas of Trinity Term, 1208.[1] Times and again the King's justices itinerant were specially warned not to interfere with the pleas belonging to the justices of the Jews,[2] and in the second year of Henry the Third similar instructions were issued to the constable of Bristol.[3] It is because of this exclusive competence that very little information concerning the Jews can be found in the records of any other court.[4] The rolls of the Exchequer of the Jews go back to 1218,[5] but after this date cases occasionally come on to plea rolls, the ones before us being instances.[6] From the first of these[7] we learn that a Jew named Adrian was taken from Bristol to London to be tried by the justices of the Jews[8] on a charge of homicide. His chattels were valued, and

[1] *Select Pleas of the Crown (Selden Society)*, pl. 59, 103.

[2] *Exch. Pl.*, No. 10, mem. 3-4; *Pat. Rot.*, 2 Hen. III., pars. 1, mem. 3; *Rotuli Selecti* (London, 1834), 210; Prynne, i, 34, ii [22, 82, 119], qu. by Gross, *Publications Anglo-Jewish Historical Exhibition*, i, 204, 85*n*.

[3] Prynne, *A Short Demurrer to the Jews*, ii, 17.

[4] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 470.

[5] Rigg, *Select Pleas, Starrs and Records of the Jewish Exchequer (Selden Society)*, Introd., xx.

[6] See also *Select Pleas of the Crown (Selden Society)*, pl. 59, 103. Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 457.

[7] No. 29.

[8] Then Rich. de Dol and Master Alex. de Dorset; *Rotuli Litterarum Clausarum (Record Commission)*, i, 445*b*.

certain Jews were said to have undertaken (*ceperunt in manum*) before the coroners and bailiffs to produce the chattels together with Rachel, Adrian's wife.[1] Failing to perform their engagement, they were amerced for the transgression. Upon this two of them denied that they ever gave any such undertaking, but such denial was powerless against the coroners' rolls. It is interesting to note that although the offender was to be tried by the Exchequer of the Jews, the matter of the chattels came before the itinerant justices, it being customary to insert in the Articles of the Eyre a head ordering an inquiry to be made respecting the chattels of Jews who had been slain, and of their securities, deeds, and debts, and who held the same.[2] The transgression of Ducefurmage the Jewess[3] seems to have been a breach of the edict of 1194. Having secretly made a loan, she deposited the deed with her lady friend instead of in the official ark, and so seriously did the justices view the fault that they fined her twenty shillings.

But exactions did not stop at persons. When any animate or inanimate thing caused the death of a

[1] Prynne (*A Short Demurrer to the Jews*, ii, 57, 59), and Madox (*History of the Exchequer*, i, 225, 229, 230, 258) tell us that it was a common thing for a Jew's wife and children to be imprisoned as hostages.

[2] *Liber Albus*, 70, 105.

[3] No. 30.

human being, such thing was given, as it were to God, to appease His wrath.[1] In Coke's time the thing was either forfeited to the King for his almoner to dispose of by sale, and to distribute the proceeds to the poor, or was forfeited to the lord of a liberty for the same purpose. But in the thirteenth century the practice appears to have been for the ox, the boat, the horse, or other thing that caused the death to be taken by the sheriff or some other officer, and sold, and at the eyre an order was made for such officer to account for its value.[2] In Bristol, in the cases before us, the accounting officer was either the constable of the Castle or the coroner.[3] The justices could, if they wished, direct for what specific purpose the money should be applied. William de la Hay is named especially to receive seven shillings and eleven pence for God's sake (*datur pro deo*), and the children

[1] 3 *Inst.*, 57.

[2] *Select Pleas of the Crown (Selden Society)*, pl. 156; *Liber Albus*, 94. For numerous other instances of deodands see *Northumberland Assize Rolls (Surtees Society)*, *Somerset Pleas (Somerset Record Society)*, Maitland's *Pleas of the Crown for the County of Gloucester*, and Hale's *Pleas of the Crown*, i, 419-424. The following is a curious modern instance:—In July, 1837, a coroner's jury sat on the body of a parachutist who was fatally injured at Vauxhall. It declared: "We find that the deceased, Robert Cocking, came to his death casually and by misfortune in consequence of serious injuries which he received from a fall in a parachute of his own invention and contrivance, which was appended to a balloon; and we further find that the parachute, *as moving towards his death*, is deodand, and forfeit to our Sovereign Lady the Queen." The words in italics carry us, as it were with a bound, back to the days of Bracton.

[3] No. 18, 19, 20, 24.

of Walter, of the hundred of Swineshead, are given a like amount,[1] probably because of their poverty.[2] Sometimes the money went to the building of a church, to the dead man's poor sick sister, to the repair of a bridge, or such like.[3] The most common deodands were horses,[4] boats,[5] millwheels,[6] carts[7] and oxen.[8] But there are instances of a cauldron (*caudera*),[9] geese,[10] a pack,[11] a load of crop,[12] a door,[13] a millstone,[14] a cask of wine,[15] a net,[16] a boar pig,[17] and an oak tree,[18] becoming deodand. A very striking case appears on the rolls of the eyre for Somerset held in the 27th year of Henry the Third (1242-1243). The Templars of Redcliff had two horses in their custody, and they tied them to the pillory in Temple Street. The horses broke their halters and pulled

[1] No. 2.
[2] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 298.
[3] *Ibid.*, pl. 47, 113, 230.
[4] *Somerset Pleas (Somerset Record Society)*, pl. 775, 798, 883, 892, 897, 1005.
[5] No. 20, 24. *Somerset Pleas (Somerset Record Society)*, pl. 802, 876.
[6] *Ibid.*, pl. 863, 918, 926.
[7] *Ibid.*, pl. 883, 891, 914, 1006.
[8] No. 2. *Somerset Pleas (Somerset Record Society)*, pl. 891, 914, 1006.
[9] *Ibid.*, pl. 803.
[10] *Ibid.*, pl. 891.
[11] *Ibid.*, pl. 892.
[12] *Ibid.*, pl. 1006.
[13] *Ibid.*, pl. 1003.
[14] *Ibid.*, pl. 914.
[15] *Northumberland Assize Rolls (Surtees Society)*, 96.
[16] *Ibid.*, 68.
[17] *Somerset Pleas (Somerset Record Society)*, 1039.
[18] *Ibid.*, 1031.

the pillory down, which, falling on a boy, crushed him to death. The value of the horses was ten shillings, and of the pillory two shillings, and the sum of twelve shillings paid by the Templars to the sheriff represented the deodand.[1] Sir James Fitzjames Stephen says, that "as a general rule a thing was not deodand unless it could be said '*movere ad mortem.*' A beast which killed a man, a tree which fell upon him, the wheel of a water-mill under which he was carried, and which killed him, were deodands. If a man was thrown from his horse against a trunk, the horse was a deodand, but not the trunk. It seemed to be the better opinion that, if a man watering his horse fell and was drowned, the horse was not a deodand unless he had thrown his master."[2] But the plea rolls of the thirteenth century show no such subtle distinctions. Ships, boats, and chattels of those drowned in the sea never became deodands,[3] probably because the local customs of England did not extend to the high seas.[4] And no deodand was ever given to the Crown in the Cinque Ports.[5] The thing which caused the death

[1] *Somerset Pleas (Somerset Record Society)*, pl. 798.

[2] Stephen, *History of the Criminal Law*, iii, 77–78; Bracton (Rolls Series), ii, 401.

[3] Bracton (Rolls Series), ii, 286, 388.

[4] Stephen, *History of the Criminal Law*, iii, 78.

[5] Boys, *Sandwich*, 468.

was called *la bane.*[1] The theory of deodands is said to have arisen from the doctrine of purgatory. A person suddenly killed lost the chance of having the last rites of the Church administered to him, and as a recompense the money produced by the deodand was given for pious uses and masses to free the soul of the deceased from limbo.[2] Instead of stating that the theory of deodands arose from the doctrine of purgatory, it would be more correct to say the theory in the thirteenth century was based on such doctrine. Originally a man's death concerned only his folk, and the guilty thing would be claimed by them. But as the country became settled, the King's interest overrode that of the family, and the bane was deodand for the King (*pro rege*). As the King supplanted the family in their claim for the bane, so the Church supplanted him.[3] Deodands were only abolished in 1846.[4]

Now, although two crimes, and two crimes only, namely, homicide and rape, actually come before us here, they are sufficient to give us examples of the two forms of trial in vogue at this period. In the one there was an individual accuser, in the other the

[1] Bracton (Rolls Series), ii, 236–237; from the Saxon *bana*, a murderer. *Liber Albus*, 86, describes a horse which threw a boy as the bane of the boy (*qui fuit banum praedicti garcionis*).

[2] Jacob, *Law Dictionary*, art. *Deodand*.

[3] Holmes, *The Common Law*, 24; Bracton (Rolls Series), ii, 286.

[4] 9 and 10 Vict., c. 62.

accusation was made by common report. Two other modes of trial, namely, trial by ordeal and trial by compurgation, concern us little, for compurgation, in criminal cases, existed only in certain privileged places; and trial by ordeal was formally abolished two years prior to this eyre. The first method we shall consider was called an appeal, the trial being generally by battle. One case of homicide and both cases of rape before us were the subjects of appeals. The procedure in such matters was highly elaborate, and any deviation led to extraordinary difficulty. Indeed if the suit was not well instituted (*si secta non fuerit bene facta*), it constituted a general and primary exception. The law of the land was that the injured person had to raise the hue as quickly as possible, and pursue it from vill to vill, and to the King's sergeants, and then to the coroners, and then to the next county court. At the county court the appeal was made, and there the sheriff and the coroners caused all the words of the appeal to be enrolled. The particulars descended to the minutest details, and if the enrolment differed from the coroners' rolls or the narrative before the justices, the appeal fell to the ground.[1] Truth cannot stand alone, it needs strong corroboration. To secure the attendance of the appellee the appeal

[1] Bracton (Rolls Series), ii, 424–431.

was published at the county court. In case of default this was repeated up to the fourth time, when, failing an appearance, and no surety being found for his presence at the next county court, the consequence was outlawry. Even if surety were produced at the fourth session, and the appellee failed to appear at the fifth, he was outlawed.[1] But were the appellee duly mainprized, the appeal was removed by a writ of the King from the county court, and this writ was addressed to the sheriff ordering him to cause the appeal to come before the King's justices at Westminster or elsewhere.[2] Before the justices, the appellee would generally defend, that is, deny all of it (*defendit totum*); but if he did not plead, or pleaded inadequately, battle was waged, unless, as was the case at Bristol, burgesses were exempt from the duel. Should, however, the evidence be so strong as to remove all doubt from the judges' minds, they were obliged to disallow the battle, and in such case immediate execution was awarded.[3] The appeal of homicide on the roll is a sorry one.[4] Instead of the deceased dying from the result of blows, it was proved that he never had a blow, but, as a matter of fact, died from ordinary

[1] *Select Coroners' Rolls (Selden Society)*, 18–21.
[2] *Ibid.*, 65–66.
[3] Stephen, *General View of the Criminal Law*, 1st Edit., 17.
[4] No. 14.

illness. Moreover he had lived a year after the alleged beating, and in order to make the killing felonious, it was requisite that the party die within a year and a day after the stroke received.[1] It seems strange at first sight that this case came on to the roll at all, because it is an appeal by a sister for her brother's death, and the 54th article of Magna Charta had declared that no one should be taken or imprisoned on account of the appeal of a woman concerning the death of another than her husband.[2] But the reference to Gerard of Athée proves that the appeal was begun before the Great Charter was granted. The two appeals of rape[3] collapsed almost as badly as did the one of homicide. In the first, Christiana failed to appear, and the ravisher escaped with a fine of six shillings and eight pence. In the second, the woman married before the appeal came on, and the man fled into Ireland. Although Bracton states that a man guilty of rape might suffer loss of members or even be sentenced to death if he fled for his crime,[4] it is clear that in the reigns of King John, Henry the Third, and Edward the First, numbers of appeals of rape were quashed, abandoned,

[1] Blackstone, *Commentaries on the Laws of England*, 11th Edit., iv, 197.

[2] Stubbs, *Select Charters*, 8th Edit., 303; "Nullus capiatur nec imprisonetur propter appellum foeminae de morte alterius quam viri sui."

[3] No. 15, 16.

[4] Bracton (Rolls Series), ii, 330, 480.

or compounded, and in some cases were the preludes to marriages.[1]

The second form of trial that concerns us differs entirely from the one that has just claimed our attention. In it there was no individual accuser, the accused being indicted upon common fame (*fama patriæ*). The accusation was made by the jurors representing the hundred, township, or borough where the alleged offence occurred, acting upon report. If the judge had any doubt or suspected the jury, it was his duty to discover from whom the jurors gained their information. The accused might put himself upon his country (*super patriam*), or more strictly speaking upon the vicinage (*visnetum*), and could have removed from the jury anyone to whom he reasonably objected. The twelve jurors swore to speak the truth concerning those things which the justices should require from them on the part of the lord the King, and for nothing should they omit to speak the truth. They were then addressed by one of the justices and charged as follows:—"So and so, who is here present accused of the death of such an one or of some other crime, comes and defends the death and the whole matter, and puts himself upon your tongues concerning the

[1] *Select Pleas of the Crown (Selden Society)*, pl. 7, 96, 141, 166; Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 4, 16, 76, 102, 155, 179, 341, 426; *Northumberland Assize Rolls (Surtees Society)*, 92, 93, 94, 109, 111, 122, 329.

matter for good or for evil; and therefore we say to you on the faith in which you are bound to God, and in virtue of the oath, which you have taken, that you cause us to know the truth thereof, and omit not from fear, or love, or hatred, but having God only before your eyes, to declare to us, whether he is guilty of that which is imputed to him, or of any other misdeeds, or not, and not to oppress him if he shall be free and innocent of that delict."[1] Afterwards according to the verdict of the jurors there followed either the discharge or conviction of the accused.

It is not easy to say whether the presenting jury and the convicting jury was one and the same, but a careful perusal of the Gloucestershire eyre roll points to the conclusion that in 1221 it was.[2] If the hundred jury brought in a verdict of guilty, then the *juratores* of another hundred,[3] or what was more usual,

[1] Bracton (Rolls Series), ii, 450-457. Compare this with the modern form: "A. B. stands indicted for the wilful murder of C. D.; to this indictment he has pleaded not guilty. Your charge is to say whether he is guilty or not, *and hearken to the evidence.*" The words in italics would have been unnecessary in Bracton's day, for the jurors themselves were the declarants of common report and perhaps the witnesses. There is an echo of old times in the oath still administered to jurymen in criminal cases in Scotland: "You fifteen swear by Almighty God, and as you shall answer to God at the great day of judgment, you will truth say and no truth conceal, in so far as you are to pass on this assize."

[2] For fuller information concerning this, see Bracton (Rolls Series), ii, 450-458; Maitland, *Pleas of the Crown for the County of Gloucester*, Introd., xliii; Stephen, *History of the Criminal Law*, i, 258; Chadwyck-Healey, *Somerset Pleas (Somerset Record Society)*, Introd., xlix.

[3] Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 111, 316.

three or four neighbouring townships (*quatuor villate proxime*)[1] were sworn and gave their verdict, when if they agreed with the *juratores*, sentence was passed.

Another difficult matter to venture an opinion on is whether the jury had to be unanimous in its verdict. As to this, examples are so rare that no definite statement can be hazarded; but if one may judge from an isolated case on the Somerset eyre roll of 27 Henry the Third, unanimity was not required.[2]

We must now consider what methods were adopted for the detection of crime and the arrest of criminals. The oldest of all police systems was that of frank-pledge. Twice a year the sheriff visited every hundred in his county, and held the great court of the hundred or sheriff's tourn and leet for the view of frank-pledge (*visus franci plegii*).[3] According to Bracton every male over twelve years of age was supposed to be in frank-pledge and a tithing.[4] But there were exceptions. Such obligation does not appear to have rested on knights and their kinsmen, or clerks and citizens with fixed property. Then, instead of being in frank-pledge (*in franco plegio*), a man might be in the mainpast (*de manupastu*) of some magnate. This great

[1] Maitland, *Pleas of the Crown for the County of Gloucester*, 101, 213, 228, 229, 326, 330.

[2] *Somerset Pleas (Somerset Record Society)*, pl. 1082.

[3] Stubbs, *Constitutional History of England*, 5th Edit., i, 430.

[4] Bracton (Rolls Series), ii, 306.

man would be answerable for the appearance in court of all members of his household and servants to answer for any crime committed by them. As an example, Peter Champneys and Peter Marshall, servants of the Archdeacon of Gloucester, slew Anketil, the watchman of the Abbot of Saint Augustine and fled, and because the slayers were in the mainpast of the Archdeacon (*de manupastu Archidiaconi*), and he did not produce them, he was amerced.[1] Again, Norman Smith slew Adam Smith's son and fled to sanctuary, and escaped, and as Norman was in the mainpast of Adam (*de manupastu Ade*) the latter was amerced because he did not produce the slayer.[2] But concerning those who were in frank-pledge proper, the theory was that every person subject to the law was to be a member of a group of ten known as a tithing (*thethinga*, *decenna*), presided over by a chief pledge.[3] Such group was answerable for his appearance did he commit a crime. The township saw that all persons were members of such groups, and if it failed in its duty it was amerced. For instance, Nicholas Wiring slew Nicholas the Irishman and fled, and because he was in the frank-pledge of Osbert of Humersclive (*in*

[1] No. 17.

[2] No. 27.

[3] This number varied; Pollock and Maitland, *History of English Law*, 2nd Edit., i, 569.

franco plegio Osberti de Humersclive) and the frank-pledge of Osbert did not produce him, it was amerced.[1] In the reign of Henry the Second no one was supposed to forbid the sheriff to enter his court or land to take the view of frank-pledge.[2] We know, however, that many lords held their own view and excluded the sheriff altogether,[3] such being the case at Oldland and Hanham within the Swineshead hundred.[4] As regards Bristol the jurors stated on this eyre that there was no frank-pledge there nor wardship that ought to answer for fugitives (*juratores dicunt quod nullum est ibi francum plegium nec warda que debeat respondere de fugitivis*).[5] But because there was no frank-pledge *de facto* in Bristol, it must not be taken that minor offences went unpunished. The result of the town being free of frank-pledge was to give the burgesses the right of holding the view without interference from royal officials. And this contention is confirmed by a charter granted by Edward the Second to Bristol in 1331, which declared that it had been found that the burgesses and their ancestors from time immemorial had always had view of frank-pledge in the

[1] No. 3.
[2] *Assize of Clarendon*, art. 9; Stubbs, *Select Charters*, 8th Edit., 144.
[3] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 570.
[4] Braine, *History of Kingswood Forest*, 113.
[5] No. 18

town and suburbs.[1] The principle that immunity from frank-pledge was equivalent to the right of view was subsequently challenged by the King's justices, but history appears to have been against them.[2]

On a felony being committed, the discoverer of the crime raised the hue, and his neighbours turned out with weapons[3] and horns, and horned the hue from vill to vill.[4] If the hunted were caught with evidence of the crime about him, his fate was quickly decided before a local tribunal, or, as sometimes happened, without any form of trial. No defence was allowable. He was redhanded; and that sufficed to warrant a prompt execution.[5] The eleven men hanged at Barton Regis were probably hand-having thieves dealt with in the customary court or the county court.[6]

In treating of the appeal we have shown that if the appellee did not appear within a certain time he was outlawed. The same thing might happen to one

[1] Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 34. Ricart's *Kalendar (Camden Society)*, 79. Professor Maitland says, "It is quite rare to find in a royal charter any express grant of the view of frank-pledge"; *Select Pleas in Manorial Courts (Selden Society)*, Introd., xxii.

[2] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 578.

[3] "Writ for enforcing Watch and Ward and the Assize of Arms, A.D. 1252" Stubbs, *Select Charters*, 8th Edit., 370.

[4] *Select Pleas of the Crown (Selden Society)*, pl. 115.

[5] Pollock and Maitland, *History of English Law*, 2nd Edit., ii, 579. At Dover and Folkestone thieves were thrown from a cliff, and at Winchelsea hanged in the Salt Marsh; Green, *Town Life in the Fifteenth Century*, i, 222.

[6] No. 4; Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 280.

who fled from justice, and who was indicted before the King's justices and by them found guilty.[1] How common such cases were is seen by the record.[2] Indeed an appearance was the exception rather than the rule. Almost everyone seems to have escaped, and in the rolls of this iter the directions, "*interrogetur et utlagetur*," "*exigantur et utlagentur*," "*exigatur et utlagetur*," are so frequent as to become monotonous.[3] The King's court might order—and as we see by this record frequently did order—a man to be exacted, that is, proclaimed and bidden to come in to the King's peace. In case of non-compliance it might order him to be outlawed. But only in the county court, and in the folk-moot of London, could the solemn act be performed.[4] An outlaw forfeited everything which was of right or possession, of right accruing or likely to accrue, of right acquired or to be

[1] Bracton (Rolls Series), ii, 308.

[2] No. 3, 17, 18, 21, 22, 23, 25, 27.

[3] At Gloucester in 1221 the justices inquired into about 330 cases of homicide, and as a result one man was mutilated, about 14 were hanged, and about 100 orders of outlawry were given; Maitland, *Pleas of the Crown for the County of Gloucester*. The Northumberland Assize Roll, 40 Henry III., A.D. 1256, records 77 murders; 72 of the murderers escaped with outlawry, one murderer abjured the realm, and only in four cases did the felons receive their just punishment. The Assize Roll for the same county, 7 Edward I., A.D. 1279, shows that of 68 murderers, two were hanged, 65 escaped with outlawry, and one murderer abjured the realm; *Northumberland Assize Rolls (Surtees Society)*.

[4] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 554. John Wilkes was outlawed in the county court of Middlesex in 1764, having been "*quinto exactus* at the Three Tuns in Brook Street near Holborne"; Burrows' *Reports*, 2535-6.

acquired, and all possession in like manner in the form and mode of possessing. Not only did he lose it for himself but for all his heirs, as well remote as near.[1] He was outside the peace of the King, and, as it was called, carried a wolf's head (*caput lupinum*).[2] If he took to flight or defended himself he might be killed by anyone, and in the counties of Hereford and Gloucester, near the Welsh Marches, the custom was that an outlaw could be cut down even if he offered no resistance[3]; for, says the author of *Fleta*; deservedly ought they to perish without law who would refuse to live according to law.[4] One case before us shows how that after three men were ordered to be put in exigent and outlawed, the judgment was reversed because it was found that no suit had been made nor had there been any appeal.[5] But here there was no actual outlawry, because the mistake appears to have been discovered while the judges were in Bristol. Even had outlawry taken place such men could have been restored to the King's peace by reason of such outlawry

[1] Bracton (Rolls Series), ii, 340:—"Forisfacit omnia, quæ juris sunt & possessionis, s. & juris competentis & competituri, juris adepti & adipiscendi, & possessionem similiter in forma & modo possidendi . . . & sciendum quòd sibi ipsi & hæredibus suis omnibus, tam remotis quàm propinquis."

[2] *Ibid.*, ii, 338. *Select Pleas of the Crown (Selden Society)*, pl. 47.

[3] Bracton (Rolls Series), ii, 338.

[4] *Fleta*, lib. i, cap. xxvii.

[5] No. 25.

having been brought about at the suit of nobody (*ad nullius sectam*).[1]

Now supposing a person were so foolish as to allow himself to be arrested, he was able to regain his liberty by someone becoming surety for his appearance in court. In only one case do we hear of a criminal finding himself in the Castle jail, and he, true to the spirit of the times, escaped into a church and afterwards abjured the realm.[2]

When a criminal was hard pressed by pursuers, his safest plan was to fly to sanctuary. And as Bristol was plentifully supplied with churches he must indeed have been the victim of ill luck were he unable to reach one before being caught.[3] Every consecrated church was a sanctuary. Once there he was safe from pursuit, as John Durand's son and Norman Smith well knew.[4] It was the duty of the neighbours to beset the church and so prevent the escape of the criminal. Failing in this the township was amerced.[5] But

[1] Bracton (Rolls Series), ii, 372.

[2] No. 26.

[3] *Somerset Pleas (Somerset Record Society)*, pl. 795, 910.

[4] No. 26, 27.

[5] *Select Pleas of the Crown (Selden Society)*, pl. 135. The duty of watching the church in which a criminal had taken refuge was entrusted to three townships, and if he escaped the townships were amerced. Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 301; The townsfolk of Almondsbury allowed one David of Westbury to escape from their church, and the justices inquired into the matter a few days before coming to Bristol and fined the town. In London the duty fell upon the people of the ward in which the church was situate; *Liber Albus*, 244.

Bristol, as we have seen, denied all responsibility for fugitives, and when Norman Smith escaped the township went scot free. Another duty of the besetters was to send for the coroner to come and parley with the fugitive,[1] when the criminal might either elect to stand his trial or acknowledge his misdeed and abjure the realm. Should he choose the latter course he swore to go forth from the realm of England, and not to return thither except with the licence of the lord the King or of his heirs. The criminal might name the port from which he was to pass to another country. Dressed in pilgim's garb—barefooted, bareheaded, ungirt, and clothed only in his shirt, and in his hand a wooden cross, the warrant of Holy Church—he was compelled to journey in the King's highway, deviating only in case of great necessity or for a night's lodging, never delaying anywhere for two nights, and refraining from entertaining himself, so that he might reach the port by the appointed day. Arriving there, he was to cross the sea as soon as he found a ship, unless delayed by the weather.[2] No ship being obtainable, each day

[1] Pollock and Maitland, *History of English Law*, 2nd Edit., i, 566 qu. *Rotuli Hundredorum*, i, 308; "A criminal took sanctuary in the church at Fosdike; the township was bound to watch the church until the coroner came, the coroner would not come for less than a mark; so the township had to watch the church forty days to its great damage."

[2] *Fleta*, lib. i, cap. xxix. Bracton (Rolls Series), ii, 394-5. A man was allowed one month to get from Westbury to Dover and sail; Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 330.

he had to wade into the sea up to his knees or his neck to show that although willing he was unable to cross. He had to sleep on the beach, and if he failed to sail by the appointed time it became necessary to find fresh sanctuary.[1] The act of abjuration worked a forfeiture of his chattels, and caused his lands to be escheated. Should he return he was treated as an outlaw.[2] But every man clings sturdily to a whole skin; for while life remains all is not lost. Hanging is a sharp argument, and one jumps not at the humour of it. Strange figures must these proscripts have cut in the eyes of the rude villagers; these ragged, barefooted, bareheaded wayfarers, posting along the King's highway, in rain or sun, among the downs and tillage. For themselves, rural loveliness had lost its charm. Their eyes dwelt not on flowers and green fields, but furtively would spy for hideous scaffolds around which screamed the wind and the birds. And their cheeks would blanch as they hurried by these gibbets with their human burdens swinging helplessly in the blast,—for had they themselves not shaved the gallows?

If a man who had fled to sanctuary would neither confess the crime nor submit to trial after forty days, the method adopted was to starve him

[1] Réville, *L'Abjuratio Regni, Revue Historique*, Vol. 50, p. 18 (1892).

[2] *Somerset Pleas (Somerset Record Society)*, pl. 189.

into submission. To drag him out forcibly by a lay hand (*manum laicalem*) would have been horrible and unhallowed (*horribile et nephandum*).[1] The starving process was however resented by the priests,[2] and Bracton advised that the ordinary of the place, such as the archdeacon or his official, the dean or other person, should expel the criminal, for to maintain him in the church was to act against the peace and the King himself.[3] Though Bracton spoke as a priest as well as a lawyer, we know that the ecclesiastics helped the criminal rather than the law, and no less a worthy than the Abbot of Bordesley came with his monks to a church which was surrounded by representatives of three townships, and under their very noses carried off a refugee clad in the cowl of one of the monks.[4]

Sufficient has now, it is hoped, been said to render the record intelligible to every reader. The essay has far exceeded its intended limits. Nevertheless it sets up no kind of pretension to exhaustiveness. This is not the place to deal with the complexities of the criminal

[1] Bracton (Rolls Series), ii, 396-8. In 1279 Peter de la Mare, constable of Bristol Castle, and others his companions, were punished for infringing the privileges of the Church, in taking William de Lay out of the churchyard of Saints Philip and Jacob when he had fled there for refuge and carrying him into the Castle and imprisoning him and subsequently beheading him; Worcester Diocesan Registry MS., *Bishop Godfrey Giffard's Register*, 1279, fo. 93*d*.

[2] Pollock and Maitland, *History of English Law*, 2nd Edit., ii, 591.

[3] Bracton (Rolls Series), ii, 396.

[4] *Select Pleas of the Crown (Selden Society)*, pl. 135.

law and procedure of the thirteenth century even were we able to do so. Only sufficient elementary and general statements respecting such have been made to illustrate and elucidate the details of the roll. Men and matters with a distinctly local bearing have been treated more generously. Symmetry has, perhaps, been sacrificed for a new ray of light on a particular character or subject. The history of our towns is not to be found in local archives only, and whenever a public document enables us, ever so little, to extend our knowledge of any specific place, it is well to study it from that standpoint. For, after all, what are the most valuable elements of history but original records containing nothing but simple facts, uncoloured and unwarped by prejudices and opinions? They are a means by which the dry dust of antiquity can be changed into the breath and beauty of life. They wake the ancient world from its sleep, and history moves as a pageant before our eyes. The value of the record, as compared with the chronicle, is being more and more recognized. Chronicles should be used with caution; but we need approach authentic muniments with no such fear and trembling.

Since the clerks sat down to write these cold memorials of humanity seven hundred years have almost passed. Time has waved its transforming

wand. The great are fallen, the wise men gone, and silence is on them; silence and the sublime sanctifying sleep of forgetfulness. The old town-worship, in which the individual only felt his more elevated life as a part of the consecrated community that had led him and his to all excellence and glory, is no more. Mediæval Bristol has crumbled into dust. Save for a few mouldy cellars the Castle is a mere memory. Nevermore will kings and queens, ambassadors and legates, play their stately farce and plot their wars and murders within its chambers. Desecrated are its foundations by ugly factories and hucksters' shops. The picturesque houses of the burghers have had to make way for huge emporiums and stuccoed horrors. Courtly messages, delivered with that old-time ceremony of which only our forbears were capable, have vanished before the flimsy telegram. Gaily caparisoned horses have been supplanted by cabs and electric tramcars Princely merchants and mighty barons have been displaced by "citizens of the familiar type, who keep ledgers, and attend church, and have sold their immortal portion to a daily paper." Still there it all is. Time never obliterates, it only hides. And it but needs these little yellow membranes to lift the veil and bring all back again. Fearfully does one realize that if there is a law of progressive improvement it limps along with spastic

gait. The past seven centuries have produced nothing better in action, thought, art and religion than existed in the thirteenth century. We should look back to the men of that age with envy were it not that the world is interesting because of its imperfections. To some this record may show that human nature too has advanced but little. Heredity and environment may have altered the shape of the hat, but the old face is still beneath it.

DESCRIPTION OF THE TRANSCRIPT.

In the original roll marks of abbreviation are freely used. For the convenience of readers every abbreviated word in the body of the record is here written out in full. The words in the margin are not expanded, and stand in their original form, but the following list will make them easily intelligible:—

abjur=*abjuravit:* some one has abjured the realm.

ad jud=*ad judicium:* a judgment is to be given against some one.

custod=*custodiatur:* some one is to be kept in custody.

$\overline{\text{do}}$ dand=*deodandum:* something is deodand.

exig=*exigatur:* some one is to be put in exigent.

inquir ap Radi$\overline{\text{g}}$=*inquirendum apud Radinge:* inquiry must be made at Reading.

loq=*loquendum:* the matter must be further discussed.

loq ap Lond=*loquendum apud Londoniam:* the matter must be further discussed in London.

loq cum co=*loquendum cum concilio:* the matter must be brought before the King's Council.

mia, mie=*misericordia, misericordie:* some one is to be amerced.

mdr=*murdrum:* a murder, that is, the murder fine is to be exacted.

trans=*transgressio:* some one has committed a petty crime.

utlag=*utlagetur:* some one is to be outlawed.

A marginal note printed within brackets, thus: [custod], signifies that the entry on the original roll has been scored through with a pen. A few words, the correctness of which is more than usually doubtful, are printed in italics. Arabic numerals are used instead of Roman. For example, instead of xx *s'* is printed 20s. (20 shillings); instead of l *m'* is printed 50 m. (50 marks); instead of dim m is printed ½ m. (a half-mark, 6s. 8d.); and instead of vj *d'* is printed 6d. (6 pence).

The pleas and amercements have been numbered for convenience of reference.

PLACITA CORONE
DE HUNDREDO DE SWINESHEVED
EXTRA BRISTOLLIAM.

PLEAS OF THE CROWN
FOR THE HUNDRED OF SWINESHEAD
OUTSIDE BRISTOL.

PLACITA CORONE

DE HUNDREDO DE SWINESHEVED EXTRA BRISTOLLIAM ANNO QUINTO REGIS HENRICI.

[Memb. 19.]

Hundredum de Swinesheved extra Bristolliam.

1. Unde veredictum captum fuit apud Bristolliam prece Juratorum et J. de Florentinis tunc Constabularii[1] et per consilium Justiciariorum; set debent respondere de hundredo suo apud Gloucestriam.

2. Walterus filius Johannis oppressus fuit quodam
d̄o dand ligno quod sex boves traxerunt; nullus malecreditur; Judicium,—infortunium; precium boum 15s. 10d.; medietas datur pro deo Willelmo de la Heie et alia medietas datur pueris Walteri; Englescheria est presentata; [2]pacati sunt.[2]

[1] See above, pp. 39-41.

[2–2] These two words are not in *Assize Roll* No. 272.

PLEAS OF THE CROWN

FOR THE HUNDRED OF SWINESHEAD OUTSIDE BRISTOL IN THE FIFTH YEAR OF THE REIGN OF KING HENRY THE THIRD.

The Hundred of Swineshead, outside Bristol.

1. The presentment for this place was taken at Bristol by the justices in council at the request of the jurors and of the then constable John of the Florentines. But [the justices protested that the men of Swineshead] ought to answer for this hundred at Gloucester.

2. Walter, John's son, was crushed to death by some wood that six oxen were hauling. No one is suspected. Judgment: misadventure. The value of the oxen was fifteen shillings and ten pence, a moiety [of which sum] is given for God's sake to William de la Hay, and the other moiety is given to Walter's children. Englishry is presented. They are paid.

3. Nicholaus Wiring occidit Nicholaum Hibernien-sem et fugit; et fuit in franco plegio Osberti de Humersclive[1] et ideo in misericordia; nullus alius malecreditur; Judicium,—interrogetur et utlagetur; catalla ejus 8s. 6d. unde heres Roberti de Ropelle[2] respondeat. Englescheria non fuit presentata ad comitatum et ideo murdrum.

4. Tres femine occise fuerunt in domo sua apud Bertone[3] a malefactoribus; nescitur a quibus set postea capti fuerunt 11 latrones et suspensi fuerunt et cog-noverunt factum illud. Englescheria est presentata.

[Memb. 19 dors.]

Adhuc de Swinesheved.

5. Quidam extraneus inventus fuit occisus in bosco ad furcas;[4] et nescitur quis fuit vel quis eum occiderit
mdr et ideo murdrum.

[1] In the Amercement Roll this place is called Hunteresclive in Barton; See No. 42.

[2] Robert of Roppelay had been constable of Bristol Castle from 1204 to 1208. See above, pp. 29–31. This plea and two others under the Bristol heading which name him (No. 13, 36) would have been from thirteen to seventeen years old.

[3] Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 313; Barton Regis hundred embraced Mangotsfield, Stapleton, and Saint George. It does not seem to have answered before the justices as a separate hundred. See above, p. 50.

[4] It is not recorded where the gallows cross for the Swineshead hundred stood. One existed at Bewell, but this was within the township of Bristol; Hunt, *Bristol*, map facing 35.

3. Nicholas Wiring slew Nicholas the Irishman and fled. And [Nicholas Wiring] was in the frank-pledge of Osbert of Humersclive which is therefore in mercy. No one else is suspected. Judgment: let him be exacted and outlawed. His chattels [were worth] eight shillings and six pence for which the heir of Robert of Roppelay must account. Englishry was not presented at the county [court] so it is a murder.

4. Three women were slain in their house at Barton [Regis] by evildoers. It was not known by whom. But subsequently eleven thieves were taken and hanged. And they confessed they did the deed. Englishry is presented.

Swineshead, continued.

5. A certain stranger was found slain in the wood by the gallows. And it is not known who he was, nor who slew him; so it is a murder.

6. Quidam homo submersus fuit in Frome;[1] nullus malecreditur; Judicium,—infortunium.

7. Tres femine et tres pueri occisi fuerunt in domo sua apud Winterburne[2] a malefactoribus; nescitur a quibus; nullus malecreditur; Judicium,—infortunium.[3] mdr Englescheria non est presentata et ideo murdrum.

8. Quidam extraneus Wulnothus nomine inventus fuit mortuus in chemino regali de Dedigtone[4] nescitur a quo nec quis fuit; nullus inde malecreditur set dicunt quod servientes de Castello de Bristollia *ibi*

[1] The river Frome ran through a considerable portion of the hundred of Swineshead and the township of Bristol.

[2] Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 193; Winterbourne was a member of the manor of Bitton.

[3] See above, p. 86.

[4] It is difficult to say exactly what place is meant. Dedystone, within the manor of Clifton, seems the most likely. If, however, this surmise is incorrect, then perhaps it is either Dodington or Doynton. Dodington was in the hundred of Edredestane, which hundred afterwards became part of the hundred of Grumbald's Ash. Doynton was in the hundred of Pucklechurch; Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 190, 305. Yet the manor of Dunton was in the manor of Swineshead; *Rotuli Hundredorum, Hen. III. et Edw. I. (Record Commission)*, i, 175 The hundreds of Grumbald's Ash and Pucklechurch answered before the justices at Gloucester; Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 112-122; 278-281. But if the crime had been committed in either of these hundreds it is difficult to understand why the presentment should have been made by the representatives of a different hundred, or why Swineshead should have had to pay the *murdrum*, for when the judges were at Gloucester a week or two before, the county had declared the custom to be that the *murdrum* was to be paid by the hundred in which the wounded person died; *Ibid.*, pl. 128.

6. A certain man was drowned in the Frome. No one is suspected. Judgment: misadventure.

7. Three women and three boys were slain in their house at Winterbourne by evildoers. It is not known by whom. No one is suspected. Judgment: misadventure. Englishry is not presented, so it is a murder.

8. A certain stranger, Wulnoth by name, was found dead in the King's highway at Dedigtone. It is not known by whom [he was killed] nor who he was. No one is suspected of this, but [the jurors] say that

interfuerunt;[1] Englescheria non est presentata et ideo
mdr murdrum.

9. Malefactores noctu[2] venerunt apud Bettone[3] et occiderunt Reginaldum de Brok et uxorem suam et 5 pueros nescitur qui fuerunt nullus inde malecreditur; Englescheria est presentata de Reginaldo et uxore sua et de quinque pueris nulla fuit Englescheria pre-
5 mdr sentata et ideo 5 murdra

10. Malefactores noctu venerunt ad domum Willelmi Beket[4] et ipsum Willelmum ligaverunt et uxorem suam et filios eorum et duos parvulos et ita unum ligaverunt quod obiit.[4] Nescitur qui fuerunt; Englescheria presentata est et ideo nichil.

11. Loquendum super villam de Bristollia de quodam appellatore[5] capto et inprisonato et per cujus

[1] The words from 'malecreditur' are interlined in Assize Roll No. 271, but nowhere appear in Assize Roll No. 272. Those in italics are very doubtful.

[2] The word *noctu* is probably material, for it afterwards became law that "if any man be slain *in the day* and the felon not taken, the township where the death or murder is done shall be amerced" (3 Henry VII., c. 1).

[3] Bitton at the time of the Domesday survey was *Terra Regis*. It appears to have remained in the King's hands until the reign of Henry the Second; Taylor, *An Analysis of the Domesday Survey of Gloucestershire (Bristol and Gloucestershire Archæological Society)*, 193; Braine, *The History of Kingswood Forest*, 108.

[4–4] These words do not appear in Assize Roll No. 272.

[5] In Assize Roll No. 272 the word *probatore* appears and not *appellatore*.

sergeants of Bristol Castle were mixed up in the matter. Englishry is not presented, so it is a murder.

9. Evildoers came by night to Bitton and slew Reginald Brook and his wife and five children. It is not known who they were. No one is suspected of this. Englishry is presented as to Reginald and his wife. As regards the five children no Englishry was presented, and so five murders.

10. Evildoers came by night to the house of William Beket and bound him and his wife and sons and two babies. And one [of the babies] they so tied that it died. It is not known who they were. Englishry is presented, so nothing is to be done.

11. In the town of Bristol must be discussed the matter of a certain appellant taken and imprisoned,

appellum plures capti et nescitur quomodo deliberatus fuit nec quo devenit.

15 m 12. [1]De villata Bristollie ne occasionentur 15 m.[2]

[1] This immediately introduces the Bristol heading. In Assize Roll No. 272 the entry has been begun; it was left unfinished and has been partly erased; but it is introduced below between No. 28 and No. 29, and again between No. 35 and No. 36.

[2] This is a fine paid by the township to prevent the justices being hard upon it for anything said or done amiss. It is really a fine for *beau pleader, pro pulchre placitando.* So grievous did these fines become that complaint was made against them at the Parliament of Oxford, A.D. 1258. *Petition of the Barons,* Art. 14; Stubbs, *Select Charters,* 8th Edit., 384. They were abolished by the Statute of Marlbridge, 52 Henry III., c. 11; 2 *Inst.,* 122–3.

and upon whose appeal several were taken. But it is not known in what manner it was determined, nor what was done.

12. The township of Bristol, that advantage be not taken of it, [paid] fifteen marks.

PLACITA CORONE
DE VILLATA BRISTOLLIE.

PLEAS OF THE CROWN
FOR THE TOWNSHIP OF BRISTOL.

PLACITA CORONE

DE VILLATA BRISTOLLIE ANNO QUINTO REGIS HENRICI.

Placita Corone de Villata Bristollie.[1]

13. Gaufridus Coffin fugit pro morte Jordani Drag submersi et non malecreditur; catalla Gaufridi 20s., unde heres Roberti de Ropelle respondeat.

[d̄o dand] 20s.

14. Agnes soror Nicholai le Bindere appellavit Walterum de Oxonia[2] et Johannem de Wintonia et Johannem de Oxonia servientes predicti Walteri de morte predicti Nicholai fratris sui et ipsa cognovit

[1] Although Bristol and Gloucester were known as boroughs in this roll, the word *villa* or *villata* is used respecting them; Maitland, *Pleas of the Crown for the County of Gloucester; Rotuli Chartarum (Record Commission)*, vol. i, pt. i, 56*b*, 204*b*.

[2] *Rotuli Litterarum Clausarum (Record Commission)*, i, 466*b*; Walter of Oxford was a moneyer in the King's service,

PLEAS OF THE CROWN

FOR THE TOWNSHIP OF BRISTOL IN THE FIFTH YEAR OF THE REIGN OF KING HENRY THE THIRD.

Pleas of the Crown for the Township of Bristol.

13. Geoffrey Coffin fled for the death of Jordan Drag by drowning and is not suspected. Geoffrey's chattels [were worth] twenty shillings, for which the heir of Robert of Roppelay must account.

14. Agnes, Nicholas Binder's sister, appealed Walter of Oxford and John of Winchester and John of Oxford, servants of the aforesaid Walter, for the death of the aforesaid Nicholas her brother. And she

quod Nicholaus vixit per unum annum[1] postquam predicti eum verberaverunt. Et Walterus venit et non malecreditur quia juratores dicunt quod nullam plagam habuit immo obiit infirmitate sua; et ideo Walterus inde quietus; et Johannes et Johannes mortui sunt et non malecrediti fuerunt; Judicium,—infortunium. Et dicunt quod Gerardus de Athie[2] cepit de eodem Waltero ad opus suum 50 m. et ad opus ipsius Agnetis 10 m.

15. Henricus Peche et Aldítha uxor appellaverunt Danielem filium Halstan quod vi[3] rapuit Cristianam filiam suam; et Daniel venit et defendit totum et Cristina non sequitur. Juratores dicunt quod Cristiana visa fuit a 4 feminabus[4] que dixerunt quod violata
[custod] fuit et secta racionabiliter facta fuit et ideo custodiatur.

[1] As to this, see above, p. 99.

[2] Gerard of Athée had been constable of Bristol Castle from 1208 to 1212; see above, pp. 31-36. This and the other pleas (No. 35, 38) in which he is named were consequently from nine to thirteen years old.

[3] Bracton (Rolls Series), ii, 488; The word *vi* was indispensable because an appeal for rape had always to show that the man "*venit . . . cum vi sua, et nequiter et contra pacem domini regis concubuit cum ea, et abstulit ei pucillagium suum sive virginitatem.*"

[4] Here we have an instance of a jury of matrons acting exactly in the way described by Bracton (ii, 488–490) when he speaks of the appellee excepting and saying that he did not take away the woman's pucelage, and that she is still a virgin. In such a case the truth was proved by the inspection of her person, and by four loyal women sworn to speak the truth whether she is a virgin or has been deflowered (*per quatuor legales fœminas juratas de dicenda veritate utrum virgo sit vel corrupta*).

herself knew that Nicholas lived for one year after the aforesaid beat him. And Walter comes and is not suspected, because the jurors say that he [Nicholas] had no blow, but on the contrary died from his ailments. So Walter is quit of this. And John [of Winchester] and John [of Oxford] are dead and were not suspected. Judgment: misadventure. [The jurors] say that Gerard of Athée took to his profit from the said Walter fifty marks, and to his profit from Agnes herself ten marks.

15. Henry Peche and Aldith his wife appealed Daniel, Halstan's son for having forcibly raped Christiana their daughter. And Daniel comes and denies all of it, and Christiana does not appear. The jurors say that Christiana was seen by four women, who said that she was violated. And suit was duly made.

½ m. Finem fecit per ½ m. quia non malecreditur per plegium Thome Harenge.[1]

16. Agnes neptis Johannis filii Claricie appellavit Stephanum le Gros de rapo et Stephanus non venit et ipsa habet virum;[2] et Stephanus fugit in Hiberniam et non fuit manens in Bristollia immo itinerans mercator; et non malecreditur; et ideo nichil.

loq cum co 17. Petrus le Champeneis et quidam alius Petrus Marescallus[3] servientes Archidiaconi Gloucestrie occi-

exig derunt Anketellum vigilem Abbatis de S. Augustino[4] et fugerunt; et fuerunt de manupastu Archidiaconi et

mia ideo in misericordia; nullus alius malecreditur; Judicium,—exigantur et utlagentur; nulla catalla habuerunt.

[1] Although this appellee was not suspected, yet was he fined. It is difficult to understand why. But appeals were quashed on very slight grounds, and as soon as the private appellor was got rid of, the King stepped in and proceeded to try the offender for the keeping of the King's peace or something else. Any reason was good enough for extorting a fine; *Somerset Pleas (Somerset Record Society)*, pl. 929.

[2] Agnes married after the alleged rape. Her husband does not appear to have been present, and without him she could make no suit; *Select Pleas of the Crown (Selden Society)*, pl. 141.

[3] *Marescallus* interlined in both rolls.

[4] David was the abbot of Saint Augustine. He was elected in 1216, and resigned or died in 1234. His body was buried under a marble with the figure of a skull and cross on it near the elder Lady's chapel; Barrett, *History and Antiquities of the City of Bristol*, 266.

So let [Daniel] be kept in custody. He made fine for half a mark because he is not suspected. The surety [for this sum of money] is Thomas Hareng.

16. Agnes, the niece of John, Clarice's son, appealed Stephen le Gros for rape. And Stephen does not appear. And [Agnes] herself has a husband. And Stephen fled into Ireland and was not residing in Bristol, but, on the contrary, was a travelling merchant. And he is not suspected, so nothing is to be done.

17. Peter Champneys and a certain other Peter Marshall, servants of the Archdeacon of Gloucester, slew Anketil, the watchman of the Abbot of Saint Augustine, and fled. And they were in the mainpast of the Archdeacon, so [the Archdeacon] is in mercy. No one else is suspected. Judgment: let them be put in exigent and outlawed. They have no chattels.

18. Jordanus Crokare occidit Thomam Textorem et vulneravit Willelmum Pollard et fugit et fuit manens in Bristollia; set juratores dicunt quod nullum est ibi
exig francum plegium nec warda[1] que debeat respondere
loq de fugitivis; et ideo inde loquendum; Willelmus
34d.[2] postea obiit. Catalla Jordani 34d. unde Willelmus le Taylur coronator respondeat. Jordanus malecreditur. Judicium,—interrogetur et utlagetur.

19. Isabella filia Osanne obruta fuit quadam careta; nullus malecreditur; Judicium,—infortunium, precium
[5s.] *carete*[3] 5s. unde Coronator[4] etc., precium catalli in
8 m. careta 8 m. quas Petrus de Cancellis[5] recepit et ideo loquendum.[6]

20. Quidam serviens Ricardi le Paumer cecidit in Framam de quodam batello et submersus est; nullus malecreditur; Judicium,—infortunium; precium batelli
[10s.] 10s. unde Constabularius respondeat. [7]Reddidit et
dō dand quietus est.[7]

[1] *gwarda* in Assize Roll, No. 272.

[2] In the margin of Assize Roll, No. 272, the words *dentur leprosis* are written. It was these unhappy people who were robbed by Gerard of Athée; see above, pp. 33, 34. The justices were more merciful than the constable.

[3] This word is more than usually doubtful.

[4] *quietus* is here interlined.

[5] *de Cancell* in Assize Roll, No. 271; *de Chaunceaws* in Assize Roll, No. 272.

[6] Assize Roll, No. 272, adds *reddidit et ideo quietus est.*

[7–7] These words are not in Assize Roll, No. 272.

18. Jordan Croker slew Thomas Weaver and wounded William Pollard, and fled. And he was residing in Bristol. But the jurors say that there is no frank-pledge here nor wardship that ought to answer for fugitives; so this must be discussed. William subsequently died. Jordan's chattels [were worth] thirty-four pence, for which William Taylor the coroner must account. Jordan is suspected. Judgment: let him be exacted and outlawed.

19. Isabella, Osanne's daughter, was run over by a certain cart. No one is suspected. Judgment: misadventure. The value of the cart was five shillings, for which the coroner [must account]. The value of the chattels in the cart was eight marks, which Peter of Chanceaux received; so this must be discussed.

20. A certain servant of Richard Palmer fell into the Frome out of a certain boat and was drowned. No one is suspected. Judgment: misadventure. The value of the boat was ten shillings, for which the constable must account. He has paid and is quit.

exig 21. Walterus Gaumbe occidit Osbertum Fox; et fugit; nullus alius malecreditur; Judicium,—interrogetur et utlagetur; nulla catalla habuit.

22. Uxor Ricardi le Noreis le Sermuner[1] occidit
utlag uxorem Elie Forestarii: et fugit cum Ricardo viro suo et malecreditur; et ideo Ricardus exigatur et utlagetur; nulla catalla habuit.[2]

23. Johannes clericus de Cornubia[3] occidit quandam
exig feminam et fugit; nullus alius malecreditur; Judicium,—exigatur et utlagetur; nulla catalla habuit.

24. Quidam juvenis de Monemue cecidit de quodam batello et submersus est nullus malecreditur; Judicium,—
dō dand [10s.] infortunium; precium batelli 10s. unde constabularius respondeat. [4]Reddidit et quietus.[4]

25. Nicholaus Pollard, Rogerus Cocus, Godefridus Horsho, et Johannes de Wintonia verberaverunt

[1] *le Sermocinarius* in Assize Roll, No. 272.

[2] Although the woman committed the crime she could not be outlawed because she was not under the law, or in other words, in frank-pledge. She could however be waived *(wayviari)* and left derelict, and so placed outside the King's peace; Bracton (Rolls Series), ii. 312-314; Britton, lib. i, c. xiii, § 3.

[3] *Hybernia* in Assize Roll, No. 272.

[4–4] These words are not in Assize Roll, No. 272.

21. Walter Gaumbe slew Osbert Fox, and fled. No one else is suspected. Judgment: let him be exacted and outlawed. He has no chattels.

22. The wife of Richard Norris, the preacher, slew Eli Forester's wife, and fled with Richard her husband, and is suspected. So Richard is to be put in exigent and outlawed. He has no chattels.

23. John the clerk of Cornwall, slew a certain woman, and fled. No one else is suspected. Judgment: let him be put in exigent and outlawed. He has no chattels.

24. A certain youth of Monmouth fell out of a certain boat and was drowned. No one is suspected. Judgment: misadventure. The value of the boat was ten shillings, for which the constable must account. He has paid and is quit.

25. Nicholas Pollard, Roger Cook, Geoffrey Horseshoe and John of Winchester, beat Helena, Robert

Helenam filiam Roberti le Bindere ita quod per hoc obiit; et Nicholaus obiit et alii fugerunt et malecre-
[exig] duntur, et ideo exigantur et utlagentur; nulla catalla habuerunt. Et Helena mater Elie le Corduaner attachiata fuit pro eodem facto et venit et non malecreditur et ideo quieta. Postea recognitum est quod nunquam secta facta fuerat[1] nec aliquod appellum et ideo non exigantur; set si veniant, attachientur quod sint ad standum recto.

26. Johannes filius Durandi occidit Gervasium de Hamme et captus fuit super factum et commissus Hugoni de Vivunia[2] tunc constabulario et de gaola
abjur evasit et intravit ecclesiam et abjuravit regnum nullus
mia alius malecreditur et Hugo de Vivunia in misericordia pro evasione.

27. Normannus Faber occidit filium Ade Fabri et fugit in ecclesiam et deinde evasit et fuit de manupastu predicti Ade et ideo in misericordia; nullus
mia alius malecreditur; Judicium,—exigatur et utlagetur;
6d. catalla ejus 6d unde constabularius respondeat.

[1] Bracton (Rolls Series), ii, 326; Proceedings cannot be had to outlawry without a suit.

[2] Hugh of Vivonia was constable of Bristol Castle from 1217 to 1221; see above, pp. 38, 39.

Binder's daughter, in consequence of which she died. And Nicholas [Pollard] died; and the others fled and are suspected. So let them be put in exigent and outlawed. They have no chattels. And Helena the mother of Eli the Cordwainer was attached for the same crime, and she comes and is not suspected and so is quit of this. Afterwards it was found that no suit was made, nor was there any appeal; and therefore [the said Roger Cook, Geoffrey Horseshoe, and John of Winchester] are not to be put in exigent; but if they come, let them be attached to abide judgment.

26. John, Durand's son, slew Gervase of Ham, and was arrested under the order and commission of Hugh of Vivonia the then constable. And [John] escaped from the jail and entered a church and abjured the realm. No one else is suspected and Hugh of Vivonia is in mercy for the escape.

27. Norman Smith slew Adam Smith's son and fled into a church, and from there he escaped. And he was in the mainpast of the said Adam who is therefore in mercy. No one else is suspected. Judgment: let him be put in exigent and outlawed. His chattels [were worth] six pence for which the constable must account.

28. Robertus Vinetarius occisus fuit in cellario Thome le Cordewaner de nocte a malefactoribus; nescitur qui fuerunt malefactores nullus malecreditur; Judicium,—infortunium;[1] et Willelmus Balistarius attachiatus fuit pro eodem venit et non malecreditur et ideo quietus. Postea dictum fuit quod quidem Vinetarius de Radinge debuit hoc fecisse et ideo ibi inquirendum quia habet quendam fratrem cocum in Abbacia nesciunt eum nominare et malecredunt eum quia ea nocte visus fuit ibi et in crastino mane fugit.[2]

inquir ap Radīg

29. Adrianus Judeus occidit Johannem filium Petri et captus fuit et ductus apud Londoniam et ideo ibi loquendum cum justiciariis;[3] catalla Adriani 25s 8½d et Jacobus Hereford,[4] Jopinus Judeus, [5]Jacobus de Oxonia, Bonefei,[5] Abraham Gaban ceperunt in manum habendi Richoldam uxorem predicti Adriani et catalla,

loq 25s 8d

[1] This could not have been misadventure. The clerks are evidently in error. A similar mistake occurs above (No. 7).

[2] The whole of this entry is copied from Assize Roll, No. 272.

[3] *de uno Judeo*, adds Assize Roll, No. 272.

[4] In Assize Roll, No. 271, *obiit* is written above this name, which is struck out. For a further reference to James of Hereford, see *Rotuli Litterarum Clausarum (Record Commission)*, i, 220.

[5–5] Jopin and Bonefey were Jews of Bristol, and brothers; *Ibid.*, i, 220,

28. Robert Vintner was slain in the cellar of Thomas the Cordwainer at night by evildoers. It is not known who the evildoers were. No one is suspected. Judgment: misadventure. And William Crossbowman was attached for the same and comes and is not suspected, and therefore is quit of this. Afterwards it was said that a certain Vintner of Reading did this, at least so the story went, and therefore inquiry is to be made [at Reading] because he has a brother who was a cook in the Abbey. [The jurors] do not know his name but they suspect him because the same night he was seen there and the next morning was fled.

29. Adrian the Jew slew John, Peter's son and was arrested and taken to London, so this must be discussed there with the justices. Adrian's chattels [were worth] twenty-five shillings and eight pence half-penny. And James of Hereford, Jopin the Jew, James of Oxford, Bonefey [and] Abraham Gaban undertook to

mie et non habuerunt et ideo omnes in misericordia.[1] Et Jacobus de Oxonia et Bonefei venerunt et dedixerunt quod non ceperunt hoc in manum et Coronatores et Loq ap Lond Ballivi recordantur quod ipse et alii ceperunt hoc in manum et ideo [2]non possunt dedicere.[2]

30. Et Ducefurmage Judea malecredita de eodem [trans] pro quadam carta quam commiserat cuidam vetule in 20s. vadium et venit et defendit totum. Finem fecit per 20s. per plegium Abraham Gaban[3] et Bonefey Judeorum [4]

31. De escaetis dicunt quod quedam terre jacent vaste que capte fuerunt in manum domini Regis in

[1] Many entries relating to these Jews are to be found in Placita, etc., 3 and 4 Hen. III., contained in *Documents Illustrative of English History in the 13th and 14th Centuries (Record Commission)*, 290, 328.

[2–2] This phrase is only another illustration of the doctrine of a criminal being seised of his crime. For further particulars of this doctrine, see below, p. 162: *Glossary*, 'Non Potest Dedicere.' Where statements differed, the coroners' rolls nearly always prevailed; see above, p. 79, *note* 1; *Somerset Pleas (Somerset Record Society)*, pl. 1196, *note* 1. No one could gainsay his contract before these officers. James and Bonefey and their fellow Jews were on the reading of the roll precluded immediately from making any defence. They were, as it were, seized of their transgression.

[3] Abraham Gaban (Gabay) was himself arrested for homicide in 1222; *Rotuli Litterarum Clausarum (Record Commission)*, i, 509.

[4] *et Bonefey Judeorum* not in Assize Roll No. 272.

produce Rachel the wife of the said Adrian and the chattels; and they have not done so, so all are in mercy. And James of Oxford and Bonefey came and said that they had not undertaken this. But the coroners and bailiffs record that [James and Bonefey] with others did undertake it, so [James and Bonefey] cannot gainsay it.

30. And Ducefurmage the Jewess was suspected of the same [kind of transgression] for having entrusted a deed in gage to a certain old woman. And she comes and defends all of it. She made fine for twenty shillings [for which sum of money] the sureties are Abraham Gaban and Bonefey of the Jews.

31. As to escheats [the jurors] say that certain lands lay waste: that they were taken into the hand

loq namium pro langablo; et nullus sequitur vel petit feodum; unde loquendum est cum consilio Regis.[1]

32. De purpresturis nichil sciunt. Dicunt tamen quod plures fecerunt kaios super ripam per antiquam consuetudinem et villa non est pejorata, nec dominus loq Rex aliquod dampnum habet per hoc et ideo loquendum, nec adventus navium per hoc deterioratur, nec vicini dampnum habent; et libertas sua talis est quod bene possunt edificare super aquam dummodo nullum de predictis dampnis[2] faciant.

33. De novis consuetudinibus levatis dicunt quod waydarii solebant vendere waydam per quarterium cumulatum et nunc vendunt per quarterium rasum et hoc fuit levatum tempore Petri de Cancellis ad

[1] *Rotuli Litterarum Clausarum (Record Commission)*, i, 383*b*; In 1218 the King directed the itinerant justices in the county of Kent to adjourn all claims of franchises and difficult cases (*loquelas arduas*) before the King's Council at Westminster (*coram consilio nostro apud Westmonasterium*). The business of the *Concilium Regis* was to assist the King in determining and legislating upon the nicer and more intricate points of law, to guide the opinions and judgment of the monarch, and to assist him in the performance and discharge of his duties; *Ibid.*, Hardy's Introd., xxv.

[2] *dapnum* in Assize Roll, No. 272. Assize Roll No. 271 is here torn, and *adventus navium* and *edificare*, but partly legible, are given by Assize Roll No. 272.

of his lordship the King in distress for land-gable, and no one appeared or sued for the fee. This matter must be discussed with the King's Council.

32. As to purprestures [the jurors] know nothing. They nevertheless say that many persons have made quays upon the banks of the river according to ancient custom, and the town is not injured, neither has his lordship the King been in any way damaged thereby; and therefore this must be discussed. Neither has the arrival of ships been hindered by this, nor has the neighbourhood been damaged. And a franchise such as this is of a kind very likely to improve the river so long as none of the aforesaid receive any damage.

33. As to the levying of new customs [the jurors] say that woad-mongers have been wont to sell the woad with the quarter measure piled up, and now they sell it with the quarter measure smoothed off.

maximum nocumentum ville sue. Et ideo preceptum est ballivis suis quod de cetero vendant sicut solebant.[1]

ad jud 34. Latitudo pannorum non est servata et ideo ad judicium et preceptum est ballivis quod de cetero custodiatur assisa latitudinis.

35. De novis consuetudinibus dicunt quod constabularii capiunt de quolibet lasto allecium 2s vel sicut mercatores finem possunt facere et solebant habere [2]4 messas 2 minus[2] quam alii emptores; et hoc bene adhuc concedunt et hoc levatum fuit post tempus Girardi de Athies et ideo emendetur.

36. Item in feria Domini Regis ad festum S. Michaelis si lana corei et ferrum et wayda veniunt ad feriam mercatores solebant vendere illa 4 mercanda[3] infra villam suam eo quod sine magno custu et gravamine non potuerunt illa cariare in feriam Set post

[1] The whole of this entry and the three following entries (No. 34, 35, 36) are copied from Assize Roll No. 272.

[2–2] 4 *mesas* 2 *denar minus* in Assize Roll No. 271.

[3] *Mercandisas* in Assize Roll No. 271.

And this new practice was begun in the time of Peter of Chanceaux to the great injury of the town. Therefore it is commanded that [the King's] bailiff sells all things of this kind just as they used to be sold.

34. [The jurors say that the assize of] the breadth of cloths is not observed and therefore a judgment must be given. And it is commanded that the bailiff protects all things of this kind by the Assize of Breadth.

35. As to the new customs [the jurors] say that since the time of Gerard of Athée the constables have exacted of every last of herrings two shillings or as much as the merchants are able to make fine. And [the constables] have been wont to have four messes at two [pence] less than other purchasers, and this [the merchants] have hitherto fairly conceded. Therefore let this be rectified.

36. Also in the fair of his lordship the King on the feast of Saint Michael, if merchants come to the fair with wool, hides, and iron, and woad, they have been wont to sell those four merchandizes within his town because they were not able without great care

tempus Roberti de Roppele nullus ibi vendere potest hujusmodi mercanda[1] nisi finem fecerit aliquis per 1 lib. piperis[2] et aliquis per plus et petunt sibi hoc emendari.[3]

[Memb. 20.]

37.[4] Veredictum de Radeclive captum apud Bristolliam prece Burgensium de Radeclive cum hominibus Templariorum in Radeclive.

mia Homines Templariorum in misericordia quia primo die non venerunt respondere cum Burgensibus de Radeclive. Et sciendum quod idem homines dixerunt quod debuerunt respondere per se; set recognitum est quod non solent ita respondere per se set cum aliis et ideo decetero respondeant cum aliis vel apud Bristolliam vel in com. Sumerset. ad voluntatem

ad judm. domini Regis. Postea veniunt homines Templariorum[5]

[1] *mercandisas* in Assize Roll No. 271.

[2] Partly illegible in Assize Roll No. 272; supplied from Assize Roll No. 271.

[3] Assize Roll No. 272 again repeats the fine of 15 m. paid by Bristol; see above, No. 12. It also contains an entry relating to a plea belonging to the hundred of Dudstone; Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 435.

[4] In Assize Roll No. 271 part of what follows was apparently written in a very cramped manner at the foot of memb. 19 dors., and then copied out fairly on a separate slip of parchment (memb. 20) a few inches long.

[5] In Assize Roll No. 271 *Ap. Westm* is written partly in the margin, so as to leave it rather doubtful whether this is not part of the text—*postea veniunt . . . apud Westmonasterium*, but more probably these two words belong to the marginal note—*ad judicium apud Westmonasterium*; Assize Roll No. 272 does not mention Westminster.

and difficulty to cart these goods into the fair. But since the time of Robert of Roppelay no one might sell merchandize there in any manner unless he made fine, some of a pound of pepper and some more; and [the merchants] pray that this grievance be rectified.

37. The presentment of Redcliff taken at Bristol at the request of the burgesses of Redcliff and the vassals of the Templars in Redcliff.

The vassals of the Templars are in mercy because they did not come on the first day to answer with the burgesses of Redcliff. And [the jurors] know that the same vassals say that they ought to answer by themselves. But the recollection is that they used not thus to answer by themselves but with the others; and therefore it is only right that they answer with the others either at Bristol or in the county of Somerset

et nolunt respondere extra com. Sumerset. cum illis de Radeclive; et cognoscunt bene quod recesserunt cum illis de Radeclive de Justiciariis itinerantibus in com. Sumerset. et ibi non responderunt et ideo ad judicium.[1]

38. Juratores dicunt quod Gerardus de Athie cepit unum Flandrensem in domo Phillipi Longi[2] et cepit loq ab eo 100 m. et ideo loquendum.

39. De aliis capitulis nichil nisi infortunia.

40.[3] Isti remanent coronatores in Bristollia Michael Bohulk et Thomas Michel in Radeclive et Rogerus Fellarde[4] et Willelmus le Taillur ultra pontem.[5]

[1] The last part of this has obviously been written after the next entry.

[2] Philip Long was evidently a man of some importance. His name appears in the Close Rolls so early as 1214 (i, 200*b*). In 1215 he is named in the Patent Rolls as being one of the custodians of the Treasury at Bristol (136*b*, 137). About 1222 he was one of the witnesses to a conveyance of land in Redcliff from the Prior of Bath to Thomas Scott; *Two Chartularies of Bath Priory (Somerset Record Society)*, ii, 23, 24. He also witnessed a grant by the vicar of Banwell to the Canons of Bruton of a messuage in Thomas Street, Bristol; *Bruton and Montacute Cartularies (Somerset Record Society)*, 67. In 1226 when the justices were at Ilchester he sent his essoiner to explain that he could not attend before them on account of being on the service of the King; *Somerset Pleas (Somerset Record Society)*, 382 (5*r*).

[3] Not in Assize Roll No. 272.

[4] *Fellard̄*, substituted for *de Scrogham*.

[5] The local Calendars say that no bridge existed over the Avon before 1247, the year in which the first stone structure was begun. Seyer (*Memoirs of Bristol*, ii, 29) believed a wooden bridge was used before that date, but he based his belief on no higher ground than "extreme probability." The words "*ultra pontem*" prove beyond all doubt that a structure existed in 1221.

at the will of his lordship the King. Afterwards the vassals of the Templars come and refuse to answer outside the county of Somerset with those of Redcliff; and they admit that they had withdrawn with those of Redcliff from the justices in eyre in the county of Somerset, and had not answered there; and therefore a judgment must be given.

38. The jurors say that Gerard of Athée arrested a Fleming in the house of Philip Long and took from him one hundred marks; so this must be discussed.

39. As to the other Articles [of the Eyre the jurors can say] nothing, unless [some deaths by] misadventure.

40. These remain coroners in Bristol, Michael Bohulk and Thomas Mitchell in Redcliff and Roger Fellard and William Taylor across the bridge.

AMERCIAMENTA
DE HUNDREDO DE SWINESHEVED
EXTRA BRISTOLLIAM
ET DE VILLATA BRISTOLLIE
DE ITINERE ABBATIS DE RADDINGE
J. DE MUNEMUE
ET SOCIORUM SUORUM.

AMERCEMENTS
FOR THE HUNDRED OF SWINESHEAD
OUTSIDE BRISTOL
AND THE TOWNSHIP OF BRISTOL
IN THE ITER OF THE ABBOT OF
READING JOHN OF MONMOUTH
AND THEIR FELLOWS.

AMERCIAMENTA[1]

DE HUNDREDO DE SWINESHEVED EXTRA BRISTOLLIAM ET DE VILLATA BRISTOLLIE DE ITINERE ABBATIS DE RADDINGE J. DE MUNEMUE ET SOCIORUM SUORUM.

[Memb. 23]

Hundredum de Swinesheved.[2]

41. De Hundredo pro murdro exceptis libertatibus—3 m.[3]

42. De franco plegio Osberti de Huneresclive in Bertona pro fuga Nicholai Wiringe—½ m.[4]

43. De herede Roberti de Roppelle de catallis ejusdam Osberti[5] fugitivi—8s. 6d.

[1] The amercements are not found in Assize Roll No. 272.

[2] The amercements are all entered under this heading although some of them relate to Bristol. Except in respect of the last two entries, the foot notes connect the amercements with the cases they relate to.

[3] In many instances dwellers within franchises were exempt from fines imposed on a county or district. A murder fine was always said to be paid by the hundred *exceptis libertatibus*. This fine appears not to have been a fixed one, and the judges exercised a wide discretion in assessing the amount. In the Gloucestershire eyre of 1221 the sum paid by the different hundreds ranged from one mark to forty shillings; Maitland, *Pleas of the Crown for the County of Gloucester*, pp. 118–134. It is well to remember that in the Conqueror's time the fine was 46 marks or £30 13s. 4d.; Stubbs, *Select Charters*, 8th Edit., 84; Statutes of William the Conqueror, c. 3.

[4] See No. 3.

[5] *Osberti* is evidently a mistake for *Nicholai*. It was Nicholas who took to flight, and for whose chattels the heir of Robert of Roppelay was answerable; see No. 3.

AMERCEMENTS

FOR THE HUNDRED OF SWINESHEAD OUTSIDE BRISTOL AND THE TOWNSHIP OF BRISTOL IN THE ITER OF THE ABBOT OF READING JOHN OF MONMOUTH AND THEIR FELLOWS.

Hundred of Swineshead.

41. The Hundred for murders, franchises excepted—Three marks.

42. The frank-pledge of Osbert of Humersclive in Barton for the flight of Nicholas Wiring—Half a mark.

43. The heir of Robert of Roppelay for the chattels of the said Osbert, a fugitive—Eight shillings and six pence.

44. De villata Bristollie ne occasionetur—15 m.[1]

45. De herede Roberti de Roppelle de catallis Gaufridi Coffin fugitivi—20s.[2]

46. De Danielle filio Alstani de fine suo pro transgressione—½ m. per plegium Thome Hareng.[3]

47. De Willelmo le Taillur coronatore de catallis Jordani Croker fugitivi—33d.[4]

48. De[5] eodem de catallis Normanni Fabri fugitivi—6d.[6]

49. De Ducefurmagre Judea de fine suo pro transgressione—20s. per plegium Abram. Gaban, Bonefey Jud. . . .[7]

50. De Hugone Giffard pro plegio Walteri de Grava—½ m.

51. De Petro de Haya pro disseisina—½ m. per plegium Willemi Tragin.

[1] See No. 12.

[2] See No. 13.

[3] See No. 15.

[4] See No. 18.

[5] The beginning of an entry affecting Hugh of Vivonia is struck out. Had it been completed it would undoubtedly have referred to the case of John, Durand's son; See No. 26.

[6] See No. 27.

[7] See No. 30.

44. The township of Bristol that occasion may not be taken against it—Fifteen marks.

45. The heir of Robert of Roppelay for the chattels of Geoffrey Coffin, a fugitive—twenty shillings.

46. Daniel, Halstan's son, the fine for his transgression—Half a mark by pledge of Thomas Hareng.

47. William Taylor, coroner, for the chattels of Jordan Croker, a fugitive—Thirty-three pence.

48. The same [William Taylor] for the chattels of Norman Smith, a fugitive—Six pence.

49. Ducefurmage the Jewess, the fine for her transgression—Twenty shillings by pledges of Abraham Gaban [and] Bonefey of the Jews.

50. Hugh Gifford as pledge for Walter de Grave—Half a mark.

51. Peter Hay for disseisin—Half a mark by pledge of William Tragin.

GLOSSARY.

Attachiare (No. 25, 28), to seize a person by legal process.

Batellus (No. 20, 24), a boat.

Captus (No. 4, 11, 26, 29), to arrest.

Careta (No. 19), a cart. Fr. *charette*.

Cepere in manum (No. 29), to take in hand, to undertake to produce someone.

Comitatus (No. 3), the county court.

Debuit (No. 28), was said, was reported, at least so the story went. Cf. Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 154.

Defendere (No. 15, 30), to deny.

Hamsokne (p. 21), A.S. *hámsócn*, the offence of attacking a person's house. See Schmid, Gesetze, Glossar.

Infangenthef (p. 21), the right to hang a thief if caught within one's own district with the stolen goods upon him.

Kaios (No. 32), quays. See Du Cange, *cāya*; Skeat, *quay*.

Langablum (No. 31), land-gable. The land-gable (A.S. *land-gafol*) was a rent payable on each house or holding in the nature of a ground rent. Domesday Book mentions it in relation to Cambridge, Huntingdon, and Lincoln, but not Bristol. The burgesses of Bristol held the land of their town by the service of land-gable (*per servitium langabuli*). See the charters of John, Earl of Morton, A.D. 1188, and 36 Henry III., A.D. 1252; Seyer, *The Charters and Letters Patent . . . to the Town and City of Bristol*, 10, 18.

Lasto (No. 35), a last. A.S. *hlæste*. The last of herrings is twelve thousand. *Statutes of the Realm*, i, 204.

Messa (No. 35), a mesa or messa. A French ordinance fixes it at 1020 for red herrings and a less quantity for white herrings. See Du Cange, *mesa*, *meisa*.

Miskenning (p. 20). a mistake in pleading. Unless exempt from this, every *miskenning* worked an amercement. So tricky was early procedure that it has been compared to a boy's game; *Très Ancien Coutumier*, 57.

Murdrum (No. 3, 5, 7, 8, 9, 41), the murder tax. *Murdrum* is never here used to differentiate two degrees of homicidal guilt.

Namium (No. 31), a distress, a seizure. Germ. *nehmen*, to take.

Ne occasionentur (No. 12, 44), that occasion may not be taken against them; that the judges will not be extreme to mark what is said or done amiss.

Nichil (No. 10, 16), there is nothing to be done.

Non potest dedicere (No. 29), it cannot be defended, or denied, or disputed, or gainsaid. Bracton (ii, 405, 407) uses this phrase when there is such violent presumption of guilt against a person as not to admit of any proof to the contrary. For instance, if a person is captured on a dead body with a bloody knife, he cannot gainsay the death (*morte dedicere non poterit*), and this is an ancient constitution, in which case there is no need of other proof. The Assize of Clarendon, c. 12, declared that if anyone should be taken who should be possessed of robbed or stolen goods (*saisiatus de roberia vel latrocinio*), if he were notorious and have evil testimony from the public, and have no warrant, he should not have law (*non habeat legem*); and the Assize of Northampton, c. 3, extended this doctrine (*saisitus de murdro vel latrocinio vel roberia vel falsoneria*). Contemporary records show that the judges acted in accordance with this custom. See Maitland, *Pleas of the Crown for the County of Gloucester*, pl. 174, 394. *Select Pleas of the Crown (Selden Society)*, pl. 61.

Pacati sunt (No. 2), some persons have been paid.

Purpresture (p. 64; No. 32), an encroachment, whether by building, enclosing, or using any liberty without a lawful warrant to do so.

Racionabiliter (No. 15), duly.

Rapus (No. 15, 16), this appears to be the word in common use for rape. See Du Cange, *rappus*, *rapus*. Bracton uses *raptus* (ii, 480).

Reddidit et quietus est (No. 20, 24), someone has paid and is quit of further liability.

Scot and lot (p. 23), a customary contribution laid upon all subjects according to their ability.

Sectam facere (No. 15, 25), to make suit or pursuit.

Standum recto (No. 25), to abide judgment, to stand trial.

Utfangenthef (p. 21), the right to hang a thief wherever caught, if found with the stolen goods upon him.

Veredictum (No. 1, 37), the presentment of a jury.

INDEX.